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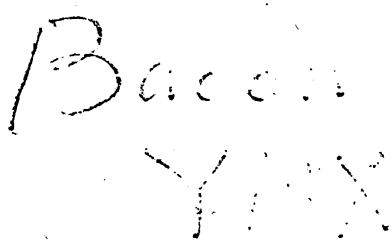

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For my name and memory I leave it to mens charitable speeches and to foreign nations and the next ages."

THE WORKS

OF

FRANCIS BACON,

Lord Chancellor of England.

A NEW EDITION:

BY

BASIL MONTAGU, ESQ.

VOL. V.

LONDON:
WILLIAM PICKERING.
MDCCCXXVI.

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PREFACE.

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Two centuries have passed away since Lord Bacon said, 'I have held up a light in the obscurity of philosophy which will be seen centuries after I am dead.'(*a*)—He died on the 9th of April, 1626. On the 9th of March, 1826, Mr. Peel, on moving for leave to bring in a bill for the amendment of the criminal law, said, 'If authority were required, I could cite some of the most illustrious names that have adorned the civil and judicial annals of this country, the names of lawyers and of statesmen, who have either expressed a decided opinion in favour of the attempt to simplify the law, or who have been actually engaged in the undertaking. To one of these, the first in point of antiquity as the first in weight and esteem, I will refer, and thus preclude the necessity of summoning other less important testimony. The lord chancellor Bacon submitted to king James I. a proposal for amending the laws

(*a*) In the dedication of the Novum Organum, he says, 'et mortuus fortasse id effecero, ut illa posteritati, nova hac accensa face in philosophiæ tenebris, prælucere possint.'

And in a letter which he wrote to the king, he says, 'And, to tell your majesty truly what I think, I account your favour may be to this work as much as an hundred years time: for I am persuaded, the work will gain upon men's minds in ages.

of England. In that treatise, short as it is, is comprised every argument that can be cited in favour of the measure of which I am speaking; every objection is foreseen and satisfactorily confuted. The lapse of two hundred and fifty years has increased the necessity of the measure which Lord Bacon then proposed, but it has produced no argument in favour of the principle, no objection adverse to it, which, to use the words of Cowley applied to Bacon himself, 'from the mountain top of his exalted wit, he did not anticipate.' (*b*).

Never was man more zealous for improvement than lord Bacon. 'The froward retention of custom is,' he says, 'as turbulent a thing as innovation: and they that reverence too much the old times, are but a scorn to the new; for time, the greatest innovater, alters all things to the worse, and, if wisdom and counsel shall not alter them to the better, what shall be the end? (*c*), and, as if foreseeing the present times, Kings, who are desirous that a perpetuity of good may descend to their country, will encourage 'the erection of temples, tombs, palaces, theatres, bridges, making noble roads, cutting canals, granting multitude of charters, and liberties for comfort of decayed com-

(*b*) For the conclusion of Mr. Peel's Speech, see note A at the end, page [i.]

(*c*) Non progredi est regredi. An Indian being pursued, his pursuers set fire to the dry grass. He saw the streams of flame overtaking him. He struck a light: set fire to the grass before him and escaped.

panies and corporations; the foundation of colleges and lectures for learning, and the education of youth; foundations and institutions of orders and fraternities for nobility, enterprize, and obedience; but, above all, the establishing good laws for the regulation of the kingdom, and as an example to the world.'

Lord Bacon's zeal for improvement was accompanied by extreme caution in the admission of alteration. 'The inferring,' he says, 'a general position from a nude enumeration of particulars, without an instance contradictory, is vicious: nor doth such an induction infer more than a probable conjecture that there is no repugnant principle undiscovered: as if Samuel should have rested in those sons of Jesse which were brought before him in the house, and should not have sought David who was absent in the field.' Upon this principle his art of invention is founded: in which his tables are tests for the detection of latent evil under apparent good, not only in natural philosophy but in morals and legislation. (*d*)

(*d*) 'Etiam dubitabit quispiam potius quam objiciet; utrum nos de naturali tantum philosophia, an etiam de scientiis reliquis, logicis, ethicis, politicis, secundum viam nostram perficiendis loquamur. At nos certe de universis hæc, quæ dicta sunt, intelligimus atque quemadmodum vulgaris logica, quæ regit res per syllogismum, non tantum ad naturales, sed ad omnes scientias pertinet; ita et nostra, quæ procedit per *inductionem*, omnia complectitur. Tam enim historiam et tabulas inveniendi conficimus de ira, metu, et verecundia, et similibus, ac etiam de exemplis rerum civilium: nec minus de

Zealous as Lord Bacon was for improvement it was not his nature to fix upon temporary evils, "nubecula est cito transibit," nor to suggest temporary remedies which 'are confined within the circle of an age or a nation, and like fruitful showers, profitable and good as they are, serve but for a season and for the latitude of ground where they fall:' but he fixed upon constant defects and suggested remedies, like the benefits of heaven, permanent and universal. He, therefore, invariably endeavours to discover general truths as the root or stem from which particular truths proceed. (*e*)

It was the custom of Lord Bacon, before he attempted to advance any science, to remove the obstacles by which its advance was impeded. His treatise 'De Augmentis Scientiarum,' opens not with

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motibus mentalibus memoriæ, compositionis et divisionis, judicii, et reliquorum; quam de calido et frigido, aut luce, aut vegetatione, aut similibus.' Aph. 127.

(*e*) 'The partitions of knowledge are not like several lines that meet in one angle, and so touch but in a point; but are like branches of a tree, that meet in a stem, which hath a dimension and quantity of entireness and continuance, before it come to discontinue and break itself into arms and boughs: Is not the precept of a musician, to fall from a discord or harsh accord upon a concord or sweet accord, alike true in affection? Is not the trope of music, to avoid or slide from the close or cadence, common with the trope of rhetoric of deceiving expectation? Is not the delight of the quavering upon a stop in music the same with the playing of light upon the water? 'And amongst the distempers of learning, he says, after the distribution of particular arts and sciences, men have abandoned universality, or 'philosophia prima;' which cannot but cease and

a laudative of learning, a hymn to the Muses, (*f*) but with a survey of the obstacles to its advancement, opposed by ignorance, but ignorance severally disguised. (*g*) So too the Novum Organum opens with a survey of the obstacles opposed to the understanding in the discovery of truth; the tendencies by which the whole human race are liable to be warped, from the truth, '*The Idols of the Tribe*,' as he terms them; (*h*) and the warps which

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stop all progression. For no perfect discovery can be made upon a flat or a level: neither is it possible to discover the more remote and deeper parts of any science, if you stand but upon the level of the same science, and ascend not to a higher science.

(*f*) I have no purpose to enter into a laudative of learning, or to make a hymn to the muses ;(though I am of opinion that it is long since their rites were duly celebrated :) but my intent is, without varnish or amplification, justly to weigh the dignity of knowledge in the balance with other things, to take the true value thereof by testimonies and arguments divine and human.

(*g*) 'In the entrance to the former of these, to clear the way, and, as it were, to make silence, to have the true testimonies concerning the dignity of learning to be better heard, without the interruption of tacit objections; I think good to deliver it from the discredits and disgraces which it hath received, all from ignorance, but ignorance severally disguised; appearing sometimes in the zeal and jealousy of divines; sometimes in the severity and arrogancy of politicians; and sometimes in the errors and imperfections of learned men themelves.'

(*h*) 'There are certain predispositions which beset the mind 'of man: certain idols which are constantly operating upon 'the mind and warping it from the truth; for the mind of man, 'drawn over and clouded with the sable pavilion of the body, 'is so far from being like a smooth, equal and clear glass,

operate upon particular individuals, '*The Idols of the Den.*' (*i*)

When Bacon's zeal for improvement, and his search for general truths, and his habit of removing obstacles are considered, it may appear extraordinary that, instead of confining his observations to mere professional antipathies, to the objections of Divines, (*k*) of Politicians, (*l*) and of Lawyers, (*m*) *the Idols of the Den*, he did not investigate the general obstacles to reform *The Idols of the Tribe.*

That there is and ever has been an antipathy to change of custom, is a truth beyond the reach of doubt. May it not be said to every city, as was said 2000 years ago to Jerusalem, 'O thou that killest the prophets, and stonest them which are sent unto thee, how often would I have gathered thy children

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'which might sincerely take and reflect the beams of things ac-
'cording to their true incidence, that it is rather like an en-
'chanted glass full of superstitions, apparitions and impos-
'tures.'

(*i*) Besides the general aberrations of human nature, we every one of us have our particular den or cavern which refracts and corrupts the light of nature; either because every man has his respective temper, education, acquaintance, course of reading and authorities, or from the difference of impressions, as they happen in a mind prejudiced or prepossessed or in one that is calm and equal.

(*k*) In the Advancement of Learning, vol. ii. p 8. and in the Novum Organum, Aph. 79.

(*l*) In the Advancement of Learning, vol. ii. p. 14

(*m*) In the tract upon the improvement of the law, and in this vol. page 338.

together, even as a hen gathereth her chickens under her wings, and ye would not. (*n*) ?

The causes of this antipathy; the principle upon which the pleasure of associating ourselves with past times depends; whether it excite some of our best feelings, or is an imaginary extension of our existence, Lord Bacon did not stop to enquire: He seems cautiously to have avoided such speculations, which to him was 'spinning out of ourselves cobwebs of learning, admirable for the fineness of their texture, but of no substance or profit.'(*o*) He contented himself with the fact that attachment to antiquity is an idol of the understanding: (*p*) a vain imagination: for the present times are the ancient times, when the world is ancient, and not those which we account ancient

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(*n*) See note B. at the end, p. [iv.]

'(*o*) The wit and mind of man, if it work upon matter, which 'is the contemplation of the creatures of God, worketh according 'to the stuff, and is limited thereby; but if it work upon itself, 'as the spider worketh his web, then it is endless, and brings 'forth indeed cobwebs of learning, admirable for the fineness of 'thread and work, but of no substance or profit.'—Q. Does the knowledge of a country ever rise higher than its metaphysics? —L'homme n'est que trop souvent inconnu à celui qui le 'gouverne. Cependant pour diriger les mouvemens de la 'poupée humaine, il faudroit connoître les fils qui la meuvent. 'Privé de cette connoissance, qu'on ne s'étonne point si les 'mouvemens sont souvent si contraires à ceux que le législateur 'en attend.'

(*p*) Novum Organum, Aph. 66, &c

" ordine retrogrado," by a computation backward from ourselves. (q)

The objections to change seem to be

1. By INTELLIGENCE.
2. By IGNORANCE.
3. By INTEREST.

THE ANTIPATHY OF INTELLIGENCE.

The desire to diminish evil, which varies with our knowledge and sensibility (r) is one of our chief sources of delight. (s) A delight so exquisite, a passion so powerful that, like all strong passions, it has a tendency to act without sufficient knowledge, (t) and, with some knowledge, to run into excess. (u) Intelligence, conscious of the blessings which it enjoys, and knowing the frailty of man's foresight: conscious that perplexities accompany the most beneficial alterations, (x) and that delay cannot be attended with permanent evil: Knowing that the love of change is nearly allied to a contempt of authority

(q) Antiquity deserveth that reverence, that men should make a stand there upon, and discover what is the best way; but when the discovery is well taken, then to make progression. And to speak truly, " Antiquitas sæculi juventus mundi." These times are the ancient times, when the world is ancient, and not those which we account ancient " ordine retrogrado," by a computation backward from ourselves.—See note C at the end, p. [vi.]

(r) See note D at the end, p. [vii.]

(s) See note E at the end, p. [ix.]

(t) See note F at the end, p. [xii.]

(u) See note G at the end, p. [xiv.]

(x) See note H at the end, p. [xv.]

and frequently accompanied by a presumptuous confidence in private judgement: a dislike of all established forms merely because they are established, and of the old paths merely because they are old; Knowing that it has a tendency to go too far rather than not far enough: Fearing the errors of good intention and suspecting that there may be latent evil beneath apparent good, is always disposed to make a stand upon the old ways, and to look with suspicion upon a love of change whether it exists in itself or in others.—Lord Bacon, zealous as he was for all improvement; believing, as he did, in the omnipotence of knowledge, that the spirit of man is as the lamp of God, wherewith he searcheth the inwardness of all secrets; and branding the idolaters of old times as a scandal to the new—says, 'It is good not to try experiments in states, except the necessity be urgent, or the utility evident: and well to beware that it be the reformation that draweth on the change, and not desire of change that pretendeth the reformation: that novelty, though it be not rejected, yet be always suspected: and, as the Scripture saith, 'that we make a stand upon the ancient way, and then look about us, and discover what is the straight and right way, and so to walk in it.' (*y*)

From the resistance by intelligence, from that holy fear which suspects danger, and foresees the possibility of mischief in approaching change, good

(*y*) See note I at the end, p. [xvi.]

is to be hoped, evil seldom to be dreaded, "if the counsel be light and weak, it will be reproved by time: if it be of weight, by time it will be settled and authorized (*u*)."

II. ANTIPATHY OF IGNORANCE.

The antipathy of ignorance is of a different nature. It originates in the attachment to existing customs, merely because they exist.—It is the attachment of Mahometans to opium and to two wives: and of Christians to alcohol and to one wife.—It is the attachment of Christians and Mahometans to the custom, that, when the father dies, the mother shall protect their children.—It is the attachment of the Hindoos to the custom that, upon the death of the father, the widow shall burn herself at his funeral, and leave their children orphans. It is the attachment of the peasants, who, in a particular district in Italy, loaded their panniers with vegetables on one side, and balanced the opposite pannier by filling it with stones: and when a traveller pointed out the advantage to be gained by loading both panniers with vegetables; he was answered, "that their forefathers, from time immemorial, had so prepared their produce for market; that they were very wise and good men, and that a stranger shewed very little understanding or decency who interfered in the established customs of a country."

(*u*) See note K at the end, p. [xix.]

From this species of antipathy nothing is ultimately to be feared. It is the mere attachment of disciples to their masters: suspension of judgment until they are fully instructed. If the opinions are erroneous the fault is, not in the pupil, but in the preceptor. Man is tenacious in retaining his opinions and society in retaining its customs: and both from the same cause, an opinion that they are well founded. (*z*)

III. THE ANTIPATHY OF INTEREST.

This is the antipathy of the herd, who care not in any tempest what becomes of the ship of the state, so they may save themselves in the cock boat of their own fortunes. (*m*) It is the antipathy of

> "Such, as for their bellies sake,
> Creep and intrude and climb into the fold,
> Of other care they little reck'ning make,
> Then how to scramble at the shearer's feast.
> And shove away the worthy bidden guest."

It is the antipathy of the pope, who said he could catch no fish if the waters were clear.

This objection, originating in the regular law of our nature, that "if man is under the influence of any passion more powerful than the love of truth, he will swerve from the truth" (*a*) appears in a variety of forms. The most prominent is pecuniary interest, crying out, "Great is Diana of the Ephe-

(*z*) See note L at the end, p. [xix.]

(*a*) See note M at the end, p. [xx.]

(*m*) See vol. 2. p. 29. and note O at the end. p. [xxviii.]

sians."—Sometimes it appears in the inconvenience which will attend the change in the transition from one custom to another, crying out, "It will turn the judges, counsellors of law, and students of law to school again."(x) Sometimes it is to be seen in the mortification of pride or power, which, averse from any feeling of inferiority, prefers tools to rivals, and turns from enquirers to

"Sleek-headed men and such as sleep a nights."

Sometimes it appears in the form of youthful passion, with

"Ears more deaf than adders,
To the voice of any true decision:"

but it always exists when our interest, real or imaginary, is concerned. 'Man would contend that two and two did not make four if his interests were affected by this position. (y) 'Agnus was the only combination which the wolf, learning to spell, could make of the twenty-four letters of the alphabet.' (z)

Although the objections of intellect and of ignorance may, possibly, be traced to a love of truth and of the public weal: the objections of interest always originate in self; and are removable only by removing the cause. The English ambassador, who, upon his return from Rome, being asked by Queen Caroline, "Why he had not attempted to make a

(x) See note A. at the end, p. [iii.] and this vol. p. 338.
(y) Hobbes.
(z) Bishop Taylor.

convert of the pope," wisely answered, "Madam, I had nothing better to offer to his Holiness."

Such are the general antipathies to improvement, *The Idols of the Tribe.*—*The Idols of the Den*, of which professional antipathies constitute one species, are modifications of the general antipathies operating, in any peculiar case, with peculiar force.—The objections of divines and of politicians, are minutely examined in the Advancement of Learning and in the Novum Organum; (*b*) and the tracts upon universal justice, and upon the improvement of the law, contain some desultory observations upon the objection of lawyers. (*c*) It is, perhaps, to be lamented, not only that the advancement of learning does not commence with an exposition of general and particular objections to the progress of knowledge, but that the treatise upon universal justice does not open with a consideration of the antipathy by lawyers, to alteration of the law, which has, in all times,(*d*) and in all places,(*e*) pervaded, and will, perhaps, for ever pervade, certain classes (*f*) of this noble profession,

From the operation of these general and parti-

(*b*) See vol. ii. p. 8, and in the Novum Organum, Aph. 79, &c.

(*c*) See p. 338, of this vol. and note A p. [i.] See also vol. ii. p. 295.

(*d*) See note N at the end, p. [xx.]

(*e*) See note N N at the end, p. [xxi.]

(*f*) See note O at the end, p. [xxvi.]

cular causes, an antipathy to alteration exists in every society, of which we were thus admonished centuries ago by the learned and pious Hooker. "If it be demanded by what means it should come to pass that so many thousands of men have been ignorant of principal moral duties, not imagining the breach of them to be sin. If it be demanded why the idolater is not ashamed to speak unto that which hath no life; to call on him that is weak for health: to pray for life unto him which is dead? Be it remembered that—Lewd and wicked custom, beginning, perhaps, at the first, amongst few, afterwards spreading unto greater multitudes, and so continuing from time to time, may be of force even in plain things to smother the light of natural understanding, because men will not bend their wits to examine, whether things, wherewith they have been accustomed, be good or evil; and thus, by process of time, wicked custom prevails and is kept as a law. The authority of rulers, the ambition of craftsmen, and such like means thrusting forward the ignorant and increasing their superstition."

The advantage of this antipathy to alteration is its preventing the hasty admission of error:—the evil is its retarding the progress of good. The resistance of error should be, but never is, the limit of its influence.(*a*) To the advice of the prophet, "State super vias antiquas et videte quænam sit via

(*a*) See note I at the end, p. [xvi.]

recta et bona et ambulate in ea," this antipathy exclaims, "upon the old ways I will stand: right or wrong I will stand in them." Does philosophy propose any measure to meliorate the condition of mankind: the placing a light house on a rock in the ocean, or the establishment of an university; the abolition of the lottery, or the abolition of the slave trade; the annihilation of torture, or the mitigation of sanguinary punishment, this labour of love is immediately resisted, and the evil prolonged for ages.

> "If providence
> Out of our evil seek to bring forth good,
> Our labour must be to pervert that end,
> And out of good still to find means of evil;"

Have we not seen, in our own time, the power of this antipathy to perpetuate established error, by preserving for centuries the tyranny of arbitrary imprisonment for debt. Christians were, near two thousand years ago, admonished of the duty of forgiveness; and philosophy, during this long interval, raised its voice amidst the prayers of our religion, crying out, "Man ought not to be judge in his own cause and assign the punishnishment of his own pain:"—but wisdom crieth out in the streets, and no man regardeth her. It was not until after the struggle of centuries that religion and philosophy triumphed over the senseless clamour of ignorance, by the abolition, in the first year of the reign of his present majesty, of this abomination to the land.

Such is the power of attachment to custom.—But resistance to reform is not the only excess of this antipathy. It is always disposed, according to the spirit of the times, to persecute the reformer. Who can forget the fate of Phocion; of Socrates; of Galileo, grown old, a prisoner to the inquisition, or of Ridley and Latimer? In the present times, in this happy country, where the irascible passions are restrained by knowledge, and the public manners softened by civilization, these errors have ceased. The enquirer, who does not suffer worldly distinctions to have precedence in his thoughts, has nothing to fear but suspicion and reproach, upon which he calculates, and, to a certain extent, approves. In these reproaches it may, however, be seen that the spririt, although subdued, is not destroyed. But the time, if not arrived, seems fast approaching, when authority will recognize the doctrine of this great philosopher, "that power to do good is the true and lawful end of aspiring; for good thoughts, though God accept them, yet towards men are little better than good dreams, except they be put in act; and that cannot be without power and place, as the vantage and commanding ground:" and when all society will unite with him in thinking that we ought not "to tear and rend one another with contradictions: and, in a civil rage, to bear arms and wage war against ourselves: but rather that, a peace concluded we ought, with joint forces, to direct our

strength against nature herself: and take her high towers, and dismantle her fortified holds, and thus enlarge the borders of man's dominion, as far as Almighty God of his goodness shall permit."

NOTES.

NOTE A.

'The house will allow me to substitute for my own imperfect expressions the emphatic terms in which lord Bacon has recorded the suggestions of a mighty intellect.

'In addressing his sovereign, he says that his object is not to tax the laws, 'I speak,' says he, only by way of perfecting them, which is easiest in the best things: for that which is far amiss hardly receiveth amendment, but that which hath already, to that more may be given.

'Besides, what I shall propound, is not to the matter of the laws, but to the manner of their registry, expression, and tradition: so that it giveth them rather new light than any new nature.

'He proceeds to state, that for the safety and convenience of the proposal which he makes, 'it is good to consider and answer those objections or scruples which may arise or be made against this work.

'*Objection the first*, 'That it is a thing needless; and that the law as it now is, is in a good estate comparable to any foreign law; and that it is not possible for the wit of man in respect of the frailty thereof, to provide against the uncertainties and evasions or omissions of law.

'The following is the answer of lord Bacon:

'For the comparison with foreign laws, it is in vain to speak of it, for men will never agree about it. Our lawyers will main-

tain for our municipal laws—civilians, scholars, travellers will be of the other opinion.

'But, sir, I must interrupt my reference to lord Bacon by remarking that the lapse of years has supplied us with answer to the first part of this objection which lord Bacon had not to urge. Foreign nations have condensed and simplified their laws—and have disentitled us to vindicate the confusion or uncertainty of our own statutes by the boast (weak and fruitless as an argument, if it were well founded) that those statutes are less confused and less uncertain than the ordinances of other states.

'"Certain it is,' says lord Bacon, 'that our laws as they now stand, are subject to great uncertainties, and variety of opinion, delays and evasions.' 'Mark,' he observes, 'whether the doubts that arise are only in cases not in ordinary experience, or in cases which happen every day. If in the first only, impute it to the frailty of man's fore-sight, that cannot reach by law to all cases; but if in the latter, be assured there is a fault in the law.

'There is an inconvenience of penal laws obsolete and out of use: for that it brings a gangrene neglect, and habit of disobedience upon other wholesome laws that are fit to be continued in practice and execution; so that our laws endure the torment of Mazentius.

'"The living die in the arms of the dead.'

'*The second objection* foreseen by lord Bacon is this:—'That it is a great innovation, and innovations are dangerous beyond foresight.

'He replies, 'All purgings and medicines, either in the civil or natural body, are innovations, so as that argument is a common-place against all noble reformations. But the truth is, that this work ought not to be termed or held for any innovation in the suspected sense.'

'Besides it is on the favourable part, it easeth—it presseth not—and lastly, it is rather a matter of order and explanation than of alteration.

'*Another objection* stated by lord Bacon, and that which is perhaps most frequently urged at present, is this:

'That it will turn the judges, counsellors of law, and students of law, to school again, and make them to seek what they shall hold and advise for law—and it will impose a new charge upon all lawyers, to furnish themselves with new books of law.

'The reply is—'For the former of these—touching the new labour, it is true it would follow, if the law, (the common law,) were new moulded into a text law, for then men must be new to begin, and that is one of the reasons for which I disavow that course.

'But in the way that I now propound, the entire body and substance of law shall remain, only discharged of idle and unprofitable or hurtful matter, and illustrated by order and other helps towards the better understanding of it and judgment thereupon.'

'For the latter—touching the new charge of books, it is not worthy the speaking of in a matter of so high importance—it might have been used of the new translation of the Bible and like works.

'Lord Bacon adds this brief sentence pregnant with a truth too often disregarded—a truth of everlasting and universal application. 'Books should follow sciences, and not sciences books.'

'Having urged these reasons for the simplification of the statute law, he lays down the principles upon which it should be conducted.

'For the reforming and recompiling of the statute law it consisteth of four parts.

'*The first*, 'To discharge the books of those statutes, where the case by alteration of time is vanished; as Lombards, Jews, Gauls, half-pence, &c. Those may nevertheless remain in the libraries of antiquities, but no reprinting of them; the like of statutes long since expired and clearly repealed.

'*The next* is, to repeal all statutes which are sleeping and not of use, but yet snaring and in force; in some of these it will perhaps be requisite to substitute some more reasonable law,

instead of them, agreeable to the time; in others a simple repeal may suffice.

'*The third*, that the grievousness of the penalty in many statutes be mitigated, though the ordinance stands.

'*The last* is, the reducing of concurrent statutes heaped one upon another to one clear and uniform law.

'Such, Mr. Speaker, are the reasons upon which I have undertaken the measure I shall propose, and such the principles by which I have guided myself in the preparation of it.

'May I not add in the concluding words of lord Bacon, this is the best way to accomplish this excellent work; of honour to your majesty's times, and of good to all times."

NOTE B.

There is an antipathy in the community to proposals for Improvement.

Tacitus wrote, that by the antient Germans it was held for no shame at all to drink and smoke four and twenty hours together. A gentleman in the court demanded how long ago, it was that Tacitus wrote concerning drinking? Answer was made, 'About 1,500 years." Then the gentleman said, "Forasmuch as drunkenness hath been so ancient a custom, and of so long descent, therefore let us not break nor bring down the same.

Beccaria says, "Men always suspect the voice of reason, and choose rather to be led by authority."

So Milton,

"I did but prompt the age to quit their clogs
By the known rules of antient liberty,
When strait a barbarous race environs me,
Of owls and cuccoos, asses, apes and dogs."

The praise of the antiquity of the law is a common topic in every debate upon an important alteration of the law. In the year 1709, in a debate upon corruption of blood, Lord Chancellor Hardwicke said, "I little thought, when I seconded the motion now under your lordships' consideration, that I should have occasion to stand up again in vindication of that motion, because

I thought the danger imminent, and the remedy apparent; and I have yet heard nothing that can induce me to alter my opinion. But now, my lords, I think myself obliged to stand up to vindicate not only the clause moved for, but the whole tenor of our laws, from the beginning to this very day. Not only since the Conquest, but even before the Conquest, from the fragments of the Saxon laws transmitted to us, it is evident that the forfeiture, or confiscation of goods and chattels, was a punishment inflicted upon many crimes as well as treason." &c.

The Earl of Chesterfield:—"My lords, as I am no virtuoso, I never put a value upon any thing merely upon account of its antiquity, and therefore the learned lord upon the wool-sack might have saved himself the trouble of tracing forfeitures down to the first original of our laws; for when I am considering whether a law or custom ought to be abrogated or revived, I never did, nor ever shall give myself the trouble to inquire into its antiquity; especially when the question is about its being just or unjust, and not about its being convenient or inconvenient. As the Roman law was not introduced among us till it was mangled and adulterated by their tyrannical emperors, if that was the original of our laws, I must say it has a very bad origin; and perhaps some of our Saxon kings, who were as fond of arbitrary power, if they could have come at it, as their neighbours, borrowed but too much from that original," &c.

The charge against Socrates was, "That he was a wise man, and an observer of what passes in the heavens, and a searcher into every thing in the bowels of the earth, and who can make a bad cause a good one."

NOTE C.

The present Times are the Ancient Times.

"The opinions," says Bacon, "which men entertain of antiquity is a very idle thing, and almost incongruous to the word; for the old age and length of days of the world, should in reality be accounted antiquity, and ought to be attributed to our own times, not to the youth of the world, which it enjoyed among

the ancients: for that age, though with respect to us it be ancient and greater, yet with regard to the world, it was new and less. And as we justly expect a greater knowledge of things, and a riper judgment, from a man of years than from a youth, on account of the greater experience, and the greater variety and number of things seen, heard, and thought of, by the person in years; so might much greater matters be justly expected from the present age, (if it knew but its own strength, and would make trial and apply,) than from former times; as this is the more advanced age of the world, and now enriched and furnished with infinite experiments and observations."

Sir Henry Wotton, in his answer to Bacon's presentation of the Novum Organum, says, "of your Novum Organum I shall speak more hereafter; but I have learnt thus much already by it, that we are extremely mistaken in the computation of antiquity by searching it backwards; because, indeed, the first times were the youngest."

In Clarendon's Essays, there is an Essay upon the Reverence due to Antiquity, in which he says, "If wisdom and understanding be to be found with the ancient, and in length of days, that time is the oldest from which men appeal to the infancy of the world; and this advances more the veneration that is always due to the grey hairs of the aged, who must be presumed to know more than the young; who likewise shall have much to answer, if, when they come to be old, they do not know more, and judge better, than they could who were old before them. And this is the best way to preserve the reverence that is due to age, by hoping and believing that the next age may know more and be better, than that in which we live; and not to rob that of the respect that will still be due to antiquity, by unreasonably imputing it to the time which we have outlived."

And it seems, that the same sentiment extended to the throne, for in Clarendon's Life, vol. iii. fo. 605, speaking of Charles II. he says. "The first objection was the novelty, which, in cases of that nature, was very dangerous, &c.—The

King had, in his nature, so little reverence or esteem for antiquity, and did in truth so much contemn old orders, forms, and institutions, that the objections of novelty rather advanced than obstructed any proposition. He was a great lover of new inventions and thought them the effects of wit and spirit, and fit to controul the superstitious observation of the dictates of our ancestors. So that objection made little impression.

So Jeremy Bentham, in his Fallacies, says: What in common language is called old time, ought (with reference to any period at which the fallacy in question is employed) to be called young or early time. As between individual and individual living at the same time and in the same situation, he who is old possesses, as such, more experience than he who is young; as between generation and generation, the reverse of this is true, if, as in ordinary language, a preceding generation be, with reference to a succeeding generation, called old;—the old or preceding generation could not have had so much experience as the succeeding. With respect to such of the materials or sources of wisdom which have come under the cognizance of their own senses, the two are on a par:—with respect to such of those materials and sources of wisdom as are derived from the reports of others, the later of the two possesses an indisputable advantage. In giving the name of old or elder to the earlier generation of the two, the misrepresentation is not less gross, nor the folly of it less incontestible, than if the name of old man or old woman were given to the infant in its cradle. What then is the wisdom of the times called old? Is it the wisdom of grey hairs? No.---It is the wisdom of the cradle."

And Lord Bacon, enjoying the prospect of the progress of learning, speaks beautifully to the same effect See vol. II. p. 297.

NOTE D.

Hodges in his travels in India, says, 'While I was pursuing 'my professional labours in Benares, I received information of 'a ceremony which was to take place on the banks of the river, 'and which greatly excited my curiosity. I had often read and 'repeatedly heard of that most horrid custom, amongst, per-

'haps the most mild and gentle of the human race, the Hindoos; 'the sacrifice of the wife on the death of the husband, and that 'by means from which nature seems to shrink with the utmost 'abhorrence, by burning.

'Upon my repairing to the spot, on the banks of the river 'where the ceremony was to take place, I found the body of the 'man on a bier; and covered with linen, already brought down 'and laid at the edge of the river. At this time, about ten in 'the morning, only a few people were assembled. After wait-'ing a considerable time the wife appeared, attended by the 'Bramins, and music, with some few relations. The proces-'sion was slow and solemn; the widow moved with a steady 'and firm step; and apparently with a perfect composure of 'countenance, approached close to the body of her husband, 'where for some time they halted. She then addressed those 'who were near her with composure, and without the least tre-'pidation of voice or change of countenance. She held in her 'left hand a cocoa nut, in which was a red colour mixed up, 'and dipping in it the fore finger of her right hand, she marked 'those near her, to whom she wished to shew the last act of at-'tention. As at this time I stood close to her, she observed 'me attentively, and with the colour marked me on the fore-'head. She might be about twenty four or five years of age, 'a time of life when the bloom of beauty has mostly fled the 'cheek in India; but still she preserved a sufficient share to 'prove that she must have been handsome: her figure was 'small but elegantly turned; and the form of her hands and 'arms was particularly beautiful. Her dress was a loose robe 'of white flowing drapery that extended from her head to 'the feet. The place of sacrifice was higher up on the bank 'of the river, a hundred yards or more from the spot where we 'now stood. The pile was composed of dried branches, of 'leaves and rushes, with a door on one side, and arched and co-'vered on the top: by the side of the door stood a man with a 'lighted brand. From the time the woman appeared to the 'taking up of the body to convey it into the pile, might occupy 'a space of half an hour, which was employed in prayer with

'the Bramins, in attentions to those who stood near her, and 'conversation with her relations. When the body was taken 'up she followed close up to it, attended by the chief Bramin; 'and when it was deposited in the pile, she bowed to all around 'her, and entered without speaking. The moment she entered, 'the door was closed; the fire was put to the combustibles, 'which instantly flamed, and immense quantities of dried wood 'and other materials were thrown upon it. This last part of 'the ceremony was accompanied with the shouts of the multi-'tude; who now became numerous, and the whole seemed a 'mass of confused rejoicing.

Now is there a christian? Is there a philosopher? Is there a man of education or any man in England, who would not wish to see this custom abolished? And why? Because we know it is an evil, and our desire to diminish evil is one of our sources of enjoyment: varying, as all our enjoyments vary with our sensibility.

Of the sympathy between knowledge and goodness, Bacon, thus speaks in the opening of Book V. of the Treatise, De Augmentis. 'The knowledge respecting the *understanding of Man* and that other respecting *his Will*, 'are, as it were 'Twins by birth: For the *purity of illumination, and the liberty* '*of will began together; fell together: Nor is there in the univer-*'*sal nature of things so intimate a sympathy, as that of truth and* '*goodness.*' Quo magis rubori fuerit viris doctis, si scientia sint 'tanquam angeli alati, cupiditatibus vero tanquam serpentes, 'qui humi reptant: circumgerentes animas, instar speculi sane, 'sed menstruati.' And in the first book he says, in general and 'in sum certain it is that "veritas" and "bonitas" differ but as 'the seal and the print: for truth prints goodness: and they 'be the clouds of error which descend in the storms of passions 'and perturbations.'

NOTE E.

It is a pleasure to diminish Evil.

Clarkson thus begins his immortal work on the Slave Trade: —"I scarcely know any subject, the contemplation of which is

more pleasing than that of the correction or the removal of any of the acknowledged evils of life;" and well may he so say, thinking of the infernal slave ship which he has destroyed, and of the slavery which, chiefly by his noble exertions, will ultimately be abolished.

Lord Bacon says, "The inclination to goodness is imprinted deeply in the nature of man; insomuch, that if it issue not towards men, it will take unto other living creatures; as it is seen in the Turks, a cruel people, who, nevertheless, are kind to beasts, and give alms to dogs and birds.---The parts and signs of goodness are many. If a man be gracious and courteous to strangers, it shews he is a citizen of the world, and that his heart is no island cut off from other lands, but a continent that joins to them; if he be compassionate towards the affliction of others, it shews that his heart is like the noble tree that is wounded itself when it gives the balm; if he easily pardons and remits offences, it shews that his mind is planted above injuries, so that he cannot be shot; if he be thankful for small benefits, it shews that he weighs mens' minds, and not their trash; but, above all, if he have St. Paul's perfection, that he would wish to be an anathema from Christ for the salvation of his brethren, it shews much of a divine nature, and a kind of conformity with Christ himself. This, of all virtues and dignities of the mind, is the greatest, being the character of the Deity; and without it man is a busy, mischievous, wretched thing, no better than a kind of vermin."

"And the Lord saw all the work that he had made, and behold it was very good."

Swift says, the King's arms in Lilliput, were an angel lifting a beggar from the earth."

Howard says, "A person of more ability, with my knowledge of facts, would have written better; but the object of my ambition was not the fame of an author. Hearing the cry of the miserable, I devoted my time to their relief. In order to procure it, I made it my business to collect materials, the authenticity of which could not be disputed. For the warmth of some expressions where my subject obliges me to complain, and for

my eagerness to remove the several grievances, my apology must be drawn from the deep distress of the sufferers, and the impression the view of it made upon me---an impression too deep to be effaced by any length of time. What I have proposed throughout my work is liable, I am sensible, to some objections; and these will, doubtless, be heightened by the cavils of those whose interest it is to prevent the reformation of abuses on which their ease or emolument may depend. Yet I hope not to be entirely deserted in the conflict: and if this publication should be the means of exciting the attention of my countrymen to this important national concern---of alleviating the distress of poor debtors and other prisoners, of procuring for them cleanly and wholesome abodes, and exterminating the goal-fever, which has so often spread abroad its dreadful contagion; of abolishing, or at least reducing, the oppressive fees of clerks of assize, and of the peace, of preventing the sale of liquors in prisons, of checking the impositions of gaolers and the extortions of bailiffs, of introducing a habit of industry into our bridewells, and restraining the shocking debauchery and immorality which prevail in our gaols and other prisons---if any of these beneficial consequences shall accrue, the writer will be happy in the pleasing reflection, that he has not lived without doing some good to his fellow-creatures, and will think himself abundantly repaid for all the pains he has taken, the time he has spent, and the hazards he has encountered."

NOTE F.

The Spirit of Improvement has a tendency to act without sufficient knowledge.

There appear to be two classes of persons peculiarly subject to this error. 1st. young men of imagination who see the restraints of government without knowing its necessity: who see "The manifold defects whereunto every kind of regiment is subject, but the secret lets and difficulties, which in public proceedings are innumerable and inevitable, they have not ordinarily the judgment to consider." And 2ndly, men in con-

templation who live, *tanquam in Republica Platonis: non tanquam in fæce Romuli.*

From the errors of youth nothing is to be dreaded. *Immediate* evil is prevented by the intelligence of the community 'standing on the old ways:' *ultimate* evil is prevented by youth discovering its errors: for whatever may be its imaginations of human perfection, it soon learns that. "In Orpheus's theatre, all beasts and birds assembled; and forgetting their several appetites, some of prey, some of game, some of quarrel, stood all sociably together listening to the airs and accords of the harp; the sound whereof no sooner ceased, or was drowned by some louder noise, but every beast returned to his own nature: wherein is aptly described the nature and condition of men, who are full of savage and unreclaimed desires of profit, of lust, of revenge; which as long as they give ear to precepts, to laws, to religion, sweetly touched with eloquence and persuasion of books, of sermons, of harangues, so long is society and peace maintained; but if these instruments be silent, or sedition and tumult make them not audible, all things dissolve into anarchy and confusion."(x)

With respect to the probable errors of contemplative life, Lord Bacon is constant in his admonitions, that Error will always exist, unless there is a union of contemplation and action. In considering the objections made by politicians to the advancement of learning, he says, "Because the times they read of are commonly better than the times they live in, and the duties taught better than the duties practised, they contend sometimes too far to bring things to perfection, and to reduce the corruption of manners to honesty of precepts, or examples of too great height. And yet hereof they have caveats enough in their own walks. For Solon, when he was asked whether he had given his citizens the best laws, answered wisely, 'Yea, of such as they would receive;' and Cicero noteth this error directly in Cato the second, when he writes to his friend Atticus; 'Cato optime sentit, sed nocet inter-

(x) See vol. 2. page 63.

dum reipublicæ; loquitur enim tanquam in republica Platonis, non tanquam in fæce Romuli."(*a*)

And in considering the peccant humours of learning, he says, " This will indeed dignify and exalt knowledge, if contemplation and action may be more nearly and straitly conjoined and united together than they have been; a conjunction like unto that of the two highest planets, Saturn, the planet of rest and contemplation, and Jupiter, the planet of civil society and action." (*b*) And in his enquiry into action and contemplation, after objecting to Aristotle's preference of a contemplative life, he adds, " Pythagoras being asked what he was, answered, 'That if Hiero were ever at the Olympian games, he knew the manner, that some came to try their fortune for the prizes, and some came as merchants to utter their commodities, and some came to make good cheer and meet their friends, and some came to look on; and that he was one of them that came to look on.' But men must know, that in this theatre of man's life, it is reserved only for God and angels to be lookers on, neither could the like question ever have been received in the church (notwithstanding their 'Pretiosa in oculis Domini mors sanctorum ejus, by which place they would exalt their civil death and regular professions), but upon this defence, that the monastical life is not simply contemplative: for contemplation which should be finished in itself, without casting beams upon society, assuredly Divinity knoweth it not." (*c*)

And in the same enquiry, he says, " we are much beholden to Machiavel and others, that write what men do, and not what they ought to do. For it is not possible to join serpentine wisdom with columbine innocency, except men know exactly all the conditions of the serpent; his baseness and going upon his belly, his volubility and lubricity, his envy and sting, and the rest; that is, all forms and natures of evil: for without this, virtue lieth open and unfenced."(*d*)

So too in his Tract on Universal Justice, he says, " all they

(*a*) See vol. 2, page 14. (*b*) See vol. 2, page 52.
(*c*) See vol. 2, 'd 224. (*d*) See vol. 2, p. 237.

which have written of Laws have handled that argument either as philosophers or as lawyers, and none as statesmen. As for philosophers they propound many things goodly for discourse, but remote from use. For the lawyers, they are mancipated and wholly devoted every one to the laws of the state where they live, or to the placits of the emperial or pontifical laws, and cannot use impartial and sincere judgment; but discourse as out of gyves and fetters. Certainly this kind of knowledge pertains properly to statesmen, who can best discern what humane society is capable of."(*e*)

But, notwithstanding the advantages of this union. "there are," says Dr. Chalmers, "perhaps no two sets of human beings, who comprehend less the movements, and enter less into the cares and concerns of each other, than the wide and busy public on the one hand; and, on the other, those men of close and studious retirement, whom the world never hears of save when, from their thoughtful solitude, there issues forth some splendid discovery to set the world on a gaze of admiration."

See Tucker's Light of Nature, vol. 2, on Moral Policy, where there are many valuable observations upon the relative duties of men in action and contemplation.

NOTE G.

The spirit of reform has a tendency to excess.

Tucker in his Light of Nature says, "Thus much may suffice for the politicians, and more it might not have become me to urge upon men of their superior talents: but with regard to the philosophers, under which class I would beg leave upon the present occasion to comprehend all who apply any serious attention to study the measures of right and wrong, I may be more free and particular, as reckoning them to lie nearer my own level. And I cannot help remarking that their ardour for virtue sometimes outruns their discretion, and like other strong desires, defeats its own purposes through too great

(*e*) See vol. 2, p. 295.

eagerness in pursuing them. It is possible with the best intentions in the world to bring much mischief both upon ourselves and others, by following headlong a blind zeal without knowledge and without examining the expedience of our aims or fitness of the measures taken to effect them. The province of zeal lies in seasons of action, and its office is to carry us through labour, pain, difficulty, danger, to bear down the force of any passion that shall obstruct our passage; but it does not become us to act without considering why nor wherefore, and in seasons of deliberation the mind cannot be too calm and unprejudiced, nor the mental eye too disengaged from any single point, or too much at liberty to look upon every object around and discern them in their proper colours."

Again,

"Now none of your appetites, not even the best of them, can be left entirely to themselves without extreme hazard: our very hunger and thirst after righteousness, like that of meats and drinks, if eagerly and fondly indulged, may rise to extravagant cravings, or hanker after unwholsesome food."

Dr. Johnson, says,

"That no change in religion has been made with that calmness, caution and moderation, which religion itself requires, and which common prudence shews to be necessary inthe transaction of any important office, every nation of the earth can sufficiently attest. Rage has been called in to the assistance of zeal, and destruction joined with reformation. Resolved not to stop short, men have generally gone too far, and in lopping off superfluities, have wounded essentials."

NOTE H.

All change is attended with Evil.

Bacon, says, "As the birth of living creatures at first are ill shapen, so are all innovations which are the birth of time." —Again,

"It is true, that what is settled by custom, though it be not good, yet at least it is fit; and those things which have long gone together, are, as it were confederate within themselves;

whereas new things piece not so well; but, though they help by their utility yet they trouble by their inconformity: besides, they are like strangers, more admired, and less favoured." Again,

"For otherwise, whatsoever is new is unlooked for; and ever it mends some, and pains other, and he that is holpen takes it for a fortune, and thanks the time; and he that is hurt for a wrong, imputeth it to the author."

Caution teaches that changes ought not to be adventured upon, without a comprehensive discernment of the consequences,—without a knowledge as well of the remote tendency as of the immediate design. The courage of a statesman should resemble that of a commander, who, however regardless of personal danger, never forgets that, with his own, he commits the lives and fortunes of a multitude; and who does not consider it as any proof of zeal or valour, to stake the safety of other men upon the success of a perilous or desperate enterprize.

NOTE I.

There is surely a great difference between *arts* and *civil affairs*: for the danger is not the same from new light, as from new commotions. In civil affairs, it is true a change even for the better is suspected, through fear of disturbance: because these affairs depend upon authority, consent, reputation and opinion, and not upon demonstration: but arts and sciences should be like mines, resounding on all sides with new works: and thus it ought to be: but the case, in fact, is otherwise.

See Traités De Legislation De Jérémie Bentham, par et Dumont, vol. 2, page 134. Chapitre des egards dus aux institutions existantes.

Bacon in enumerating the Errors of Learning, says,

'And as for the overmuch credit that hath been given unto authors in sciences, in making them dictators, that their words should stand, and not consuls, to give advice; the damage is infinite that sciences have received thereby, as the principal cause that hath kept them low, at a stay, without growth or advancement. For hence it hath come, that in arts mechanical the first deviser comes shortest, and time addeth and per-

fecteth; but in sciences the first author goeth farthest, and time leeseth and corrupteth, &c. And therefore, although the position be good, 'Oportet discentem credere,' yet it must be coupled with this, 'Oportet edoctum judicare;' for disciples do owe unto masters only a temporary belief, and a suspension of their own judgment until they be fully instructed, and not an absolute resignation, or perpetual captivity: and therefore, to conclude this point, I will say no more, but so let great authors have their due as time, which is the author of authors, be not deprived of his due, which is, further and further to discover truth.'

So too Hooker says, For men to be tied and led by authority, as it were, with a kind of captivity of judgment, and though there be reason to the contrary, not to listen unto it, but to follow like beasts the first in the herd, they know not nor care not whither, this were brutish.

Again, that authority of men should prevail with men either against or above reason, is no part of our belief. Companies of learned men, be they never so great and reverend, are to yield unto reason; the weight whereof is no whit prejudiced by the simplicity of his person which doth allege it, but being found to be sound and good, the bare opinion of men to the contrary, must of necessity stoop and give place.

Lord Clarendon, in his Essay on the Respect due to Antiquity, says,

"There is not, it may be, a greater obstruction in the investigation of truth, or the improvement of knowledge, than the too frequent appeal, and the too supine resignation of our understanding to antiquity; but what, then, shall antiquity be despised by us, and the great learning and piety of the first lights, the reverend fathers of the church, be undervalued, and their judgment looked upon without reverence? God forbid. We resort to antiquity as the best evidence of what was then done, and think we have the same liberty in the perusal of the monuments thereof, those conduits which convey the information of what was then done to us, as in other history. And

so we look upon the fathers, and what they said and what they did, with full *reverence*, though not with full *resignation*."

Blackstone, in his Commentaries says, "And it hath been an ancient observation in the laws of England, that whenever a standing rule of law, of which the reason perhaps could not be remembered or discerned, hath been wantonly broken in upon by statutes or new resolutions, the wisdom of the rule hath in the end appeared from the inconveniencies that have followed the innovation. The doctrine of the law then is this: that precedents and rules must be followed, unless flatly absurd or unjust: for though their reason be not obvious at first view, yet we owe such a deference to former times, as not to suppose that they acted wholly without consideration."

The following extract is, I believe, from a work entitled "Essays on the Formation of Opinion;" "Let him that is sceptical as to the vast importance of truth, cast his eye down the long catalogue of crimes and cruelties which stain the annals of the past, and examine the melioration which has taken place in the practices of the world, and he will not again inquire into the nature of those advantages which follow the destruction of error. All the liberality of thinking which now prevails, the spirit of resistance to tyranny, the contempt of priestcraft, the comparative rarity and mildness of religious persecution, the mitigation of national prejudices, the disappearance of a number of mischievous superstitions, the abolition of superfluous, absurd, and sanguinary laws, are so many exemplifications of the benefits resulting from the progress of moral and political truth. They are triumphs, all of them, over established error, and imply, respectively, either the removal of a source of misery or a positive addition to the sources of happiness. It is impossible for a moment to imagine, that if moral and political science had been thoroughly understood, the barbarities here noticed would have existed. A pernicious custom or an absurd law can never long prevail amidst a complete and universal appreciation of its character."

NOTE K.

We are told, in a work upon the alteration of the penal law of America, that "the worthy William Bradford, differed with his brethren on the bench, who denied their consent from none but the purest and most patriotic motives; such as their tried knowledge of crimes and criminals had prompted them conscientiously to respect. On the first appearance of the favourable symptoms effected in the government and conduct of the prisoners, they coincided, and afterwards contributed much to its maintenance." The same opposition was expressed by Pastoret, one of the French judges, in a publication upon the reform of the penal law of France, who says: "Des magistrats même je ne me dissimule point, sont opposés aux réformes desirées par la nation entiere. Nourris dans une connoissance intime de la jurisprudence pénale, ayant pour elle l'attachment si commun pour des idées anciennes, iis y sont encores attachés par un sentiment plus noble. Leur vertu a souvent adouci la sévérité de la loi, et elle leur rend cheres des maximes qu'ils rendent meilleures, en leur communiquant l'impression d'une ame tendre et virtueuse. Ce n'est pas eux qu'on doit craindre ils finissent par être justes."

NOTE L.

"One of the ends of civil government," says Paley, "is its own preservation; and the best form of government would be defective, if it did not provide for its own permanency: yet, in truth, no provisions are absolutely sufficient if they can be changed for the better: many things, therefore, in the English, as in every constitution, are to be vindicated and accounted for solely from their tendency to maintain the government in its present state, and the several parts of it in possession of the powers which the constitution has assigned to them; and because I would wish it to be remarked that such a consideration is always subordinate to another---the value and usefulness of the constitution itself."

NOTE M.

"The light of the understanding," says Bacon, "is not a dry and pure light, but drenched in the will and affections, and the intellect forms the sciences accordingly. What men desire should be true they are most inclined to believe, and thus the affections tinge and infect the understanding numberless ways, and sometimes imperceptibly."

NOTE. N.

An aversion to alter the law has in all times pervaded certain classes of this profession.

To the doctrines of Christianity the lawyers were the most violent opponents. 'They watched him, even lest he should heal on the Sabbath, that they might accuse him.' It was a certain lawyer who, professing ignorance of what our Saviour meant by the word neighbour, stood up and tempted Christ, saying, 'What shall I do to inherit eternal life?' which our Saviour calmly explained by the beautiful story of the Good Samaritan: and having explained it, quitted the lawyer, saying, 'Go thou and do likewise.' And we know also what Paul, brought up at the foot of Gamaliel, says of himself: 'I verily thought with myself that I ought to do many things contrary to the name of Jesus of Nazareth; which things I also did in Jerusalem: and many of the saints did I shut up in prison, having received authority from the chief priests: and when they were put to death, I gave my voice against them.' He did so, and he did more: he attended at the place of execution, and kept, in testimony of his consent to these barbarities, the clothes of the executioners. We find him, in the same tone of repentance and reproach, thus indicting himself, and pleading guilty to the charge: 'When the blood of the martyr Stephen was shed, I also was standing by, and consenting unto his death, and kept the raiment of them who slew him.'

'In the year 1516, Sir Thomas More describes the lawyer

as objecting to the mitigation of the punishment of death, because it would endanger the whole nation.

'I was then much obliged to that Reverend Prelate, John Morton, archbishop of Canterbury, cardinal and chancellor of England; he was eminently skilled in the law, had a vast understanding, and a prodigious memory. One day when I was dining with him, there happened to be at table one of the English lawyers, who took occasion to run out in a high commendation of the severe execution of justice upon thieves, who, he said, were then hanged so fast, that there were sometimes twenty on one gibbet; and upon that he said, he could not wonder enough how it came to pass, that since so few escaped, there were yet so many thieves left, who were still robbing in all places. Upon this, I who took the boldness to speak freely before the cardinal, said, there was no reason to wonder at the matter since this way of punishing thieves, was neither just nor reasonable. When I had stated all this, I added, that I did not see why such a method ought not be followed with more advantage, than could e'er be expected from that severe justice which the counsellor magnified so much. To this he answered, that it could never take place in England, without endangering the whole nation.' And in the year 1813, the very same objection was made in the House of Commons in England, on a motion to abolish that part of the punishment for high treason: the Attorney-General said it would endanger the constitution.—What, said Mr. Ponsonby, will the removal of the necessity of cutting out the bowels of an offender when he is alive endanger the constitution?

NOTE NN.

An aversion to alter the law has in all places pervaded certain classes of this noble profession.

The truth of this prediction of the attachment of professional men to their respective sciences, may be found in the various contests between the civilians and common lawyers; where we see scarcely any thing but the same eulogia upon the respective systems in which they were respectively engaged. In one of these works, entitled, "The Law of Laws, or the Excellency of

the Civil Law above all Human Laws whatsoever, showing of how great use and necessity the Civil Law is to this Nation;" the author, after decrying the common law and every law except the civil law, of which he says, "There is no profession or science of law but this," thus speaks of its clemency:

"Neither does it derogate from the clemency of the civil law, that it seems to deal so sharply with those as to allow such persons to be set upon the rack, thereby to manifest their innocence by an obstinate denial, or to discover their guilt by a plain confession. For, by the Roman law, before death could be inflicted, there were to be two witnesses. The case, therefore, thus standing, that the wickedness of men was grown luxuriant, and abounding, it was but necessary for the public peace, and the safety of innocent and quiet men, to make them by a vigorous course of trial either fear to offend, or be instrumental to condemn themselves. So that to bring men to the rack in such cases for trials' sake, is not to be censured for cruelty; "Non ex sævitia, sed ex bonitate talia faciunt homines;" Such things are done by men, not out of cruelty but goodness. And though there have been some, as Ludovicus Vives and Sir John Fortescue in his praises of the laws of England, who have with very much acrimony defended the contrary, yet I must say to them, 'Away with those apologies, that, by assisting persons that are accused, and pleading on the behalf of wicked men, are an occasion for wickedness to spring up and fructifie; for surely it must needs grow most, and wax most vigorous there, where it is most gently dealt withal.' But this great but most wholesome severity of the Romans was tempered with a very great allay of tenderness and care towards the accused. For the law, notwithstanding, gave so little credit to any confession made under such bitter sufferings, because it might be extorted by force, and out of a hope to be rid of the present pain, rather than that they were the words of truth, that it would never condemn, upon any such confession, except the party accused, being redeemed from his pain, and in his full liberty, did again confess the very same thing. These were the cautions which the Roman state did prescribe to be used in this sharp, but, as their policy stood, (who did not love upon a slender proof

to take away the lives of their people) very necessary course or trial by torture." See ante note A, p. 1.

In Barrow's Travels in Africa, speaking of the Cape of Good Hope, he says:—'Few die by the hands of justice. In the last eight years 110 have been sentenced to death; 38 of whom were publicly executed, and those were chiefly slaves:—the rest were condemned to labour during life at the public works. The confession of a crime, where strong and concurring testimony could not be produced, was sometimes extorted by the torture; and breaking on the wheel was a capital punishment. These were said to be seldom put in practice; yet at the time they were abolished by order of his majesty, the court of justice urged the necessity of their continuance, as proper engines of terror for preventing the commission of capital crimes, which they thought simple strangling with a cord would be insufficient to effect. Contrary, however, to the opinion of the court of justice, there have been fewer executions since the abolition of the rack and torture than had taken place in an equal period for many years before; so much so, indeed, that one of the public executioners made an application for a pension in lieu of the emoluments he used to receive for the breaking of legs and arms.'

'Thanks to the Almighty, the nature of these abominations are, in this happy country, almost unknown: they are thus described by Mercier in the "Tableau de Paris."'

What boding voice is that, which, with its harsh clamour fills the streets and the suburbs, forces its way to the very tops of the houses, and announces, that a human being, in the full vigor of youth, is going to be massacred in cold blood, by another human being, in the name of society? It is that of one hurrying along, and in discordant tones crying for sale the sentence still wet from the press. Purchasers gather round him, anxious to learn the name and crime of the delinquent, both of which, however, are quickly forgotten. A sudden and unexpected conviction has appalled the public mind. The populace hasten from their trades and their shops, and throng to the scaffold, to observe how the sufferer will go through the great scene of dying in public, in the midst of torments.

The philosopher in his quiet retreat, shudders, as he hears the sentence cried, and sitting down again to his desk, with a heaving heart, and melting eye, discusses the subject of penal laws, and the necessity of capital punishments—inquiring at the same time, whether government or laws are themselves totally free, under this head, from all grounds of self-reproach; and while he, in his solitary apartment, is thus pleading the cause of humanity, and anticipating in imagination, the prize of Berne, the executioner is wielding his iron bar, crushes his wretched victim, with eleven successive blows, doubles him upon a wheel, not (as ordained in the sentence) with his face turned towards heaven, but horribly hanging downward: his shattered bones pierce through the flesh; his hair, stiffened by anguish, drops bloody sweat: throughout his protracted agony, the poor sufferer alternately begs for water, and death. The crowd, with their eyes fixed on the dial-plate of the Hotel-de-Ville, count the strokes of the clock, shudder in dismay at the dreadful spectacle, and are silent.

This is the punishment of which the learned civilian said, "non ex sævitia, sed ex bonitate talia faciunt homines"

The very same reasoning was, in the year 1811, adopted in the English House of Commons for preventing the abolition of the punishment of death for stealing from bleaching grounds.

In opposition to this motion of Sir Samuel Romiliy's, the opinion of the Recorder and Common Serjeant were thus cited by Mr. Frankland, to show that injurious effects had resulted from abolishing the punishment of death for stealing a pocket handkerchief.

'Upon the causes and effects which have resulted from this alteration, I beg to call the attention to the opinions which have been given to the magistrates in this great city to whom the administration of criminal law is chiefly confided.'

Questions proposed to the Recorder and to the Common Serjeant of the City of London, together with their answers.

Question I. What has been the effect of the act of parliament which took away capital punishments from privately steal-

ing from the person?—*Answer.* The Recorder. The effect of the act of last sessions, in my opinion, has been to increase the number of offenders, and consequently the number of convictions. The Common Serjeant. I have not observed any beneficial effect as yet, resulting to the public from the repeal of the 8 Eliz. c. 4. which took away the benefit of clergy from the offence of privately stealing from the person.

Question II. Has it been found by experience that the number of pickpockets has increased since or diminished?---*Answer.* The Common Serjeant. The information which I have collected in the course of my official duty, has satisfied my mind, that the offence of larceny from the person has very much increased since the repeal of the statute above-mentioned, and that the offenders of that description have become more numerous, more united in gangs, and that they carry on their depredations more systematically, and with greater boldness.

Question III. Is it advisable or safe to take off the capital punishment from shop lifting, stealing from ships, &c. in canals and navigable rivers, &c. and from a dwelling-house, without breaking, and without being a burglary?---*Answer.* The Recorder. I certainly do not think it advisable to take off the capital punishment in the three cases alluded to, viz. stealing to the amount of 40s. in a dwelling house; the stealing goods to the same amount on a navigable river or canal, and the stealing goods of the value of 5s. privately in a shop. But whether any and what alteration should be made as to the amount of the value of the goods stolen, might deserve some consideration. The Common Serjeant. I am most fully convinced that the repeal of the 11 and 10 Will. III. and of 23 and 24 George II. c. 45. would be very unadvisable and very unsafe. And, in the present depraved state of the domestic and other servants in the metropolis, I cannot possibly conceive any measure, more big with mischief to every private housekeeper, and to every tradesman, than the lessening the severity of the 12 Ann. stat. 1. c. 7.

NOTE O.

'Although the lawyer in Utopia resisted improvement, yet even in these early times we find him opposed by the learned Spelman; by Sir Edward Coke, Chief Justice; and by Sir Thomas More, Lord Bacon, and Lord Clarendon, Chancellors of England; and in after-times many of the most valuable improvements of this science are to be ascribed to the knowledge and disinterested exertions of the bar and of the bench; if there are some who are allured only by the promising and pleasing thoughts of litigious terms, fat contentions and flowing fees; whose horizon is bounded; whose thoughts are limited to the improvement of their fortunes or the gratification of their ambition; the great body of this enlightened and liberal profession, grounding their purposes on the heavenly contemplation of justice and equity, are not more ready to resist alteration than to encourage improvement. If there are some, who, in pursuit of an object which they imagine to be "of the Lord from heaven," are not very scrupulous as to the road over which they must pass to attain it; the profession abounds with men who know the majesty of honest dealing; whose plans are not subservient to considerations of reward, estate or title, although they may follow in the train of their duty; who, notwithstanding the injury to their worldly pursuits from the salutary prejudices against all attempts to correct errors, and more especially such errors as are sanctioned by the long practice of a liberal profession; and notwithstanding the advantages which will be taken of such prejudices by ignorance or artifice, will say with Sir Samuel Romilly, "It is a common, and may be a convenient mode of proceeding, to prevent the progress of improvement, by endeavouring to excite the odium with which all attempts to reform are attended. Upon such expedients it is scarcely necessary for me to say, that I have calculated. If I had consulted only my own immediate interests, my time might have been more profitably employed in the profession in which I am engaged. If I had listened to the dictates of prudence, if I had been alarmed by such prejudices, I could easily have disco-

vered that the hope to amend law is not the disposition most favourable for preferment. I am not unacquainted with the best road to Attorney-Generalships and Chancellorships: but in that path which my sense of duty dictates to be right, I shall proceed; and from this no misunderstanding, no misrepresentation shall deter me."'

So too, Middleton beautifully says, 'I was never trained to pace in the trammels of the church, nor tempted by the sweets of its preferment, to sacrifice the philosophic freedom of a studious, to the servile restraints of an ambitious life: and from this very circumstance, as often as I reflect upon it, I feel that comfort in my own breast, which no external honours can bestow. I persuade myself that the life and faculties of man, at the best but short and limited, cannot be employed more rationally or laudably than in the search of knowledge: and especially of that sort which relates to our duty, and conduces to our happiness. In these inquiries, therefore, wherever I perceive any glimmering of truth before me, I readily pursue and endeavour to trace it to its source; without any reserve or caution of pushing the discovery too far, or opening too great a glare of it to the public. I look upon the discovery of any thing that is true, as a valuable acquisition to society: which cannot possibly hurt, or obstruct the good effect of any other truth whatsoever: for they all partake of one common essence, and necessarily coincide with each other: and like the drops of rain, which fall separately into the river, mix themselves at once with the stream, and strengthen the general current.'

'The same sentiment is expressed by William Wordsworth, in his impressive enquiry on the Convention of Cintra; he says, "I mean that fixed and habitual principle, which implies the absence of all selfish anticipations, whether of hope or fear, and the inward disavowal of any tribunal higher and more dreaded than the mind's own judgment upon its own act. He in whom talents, genius and principle are united, will have a firm mind, in whatever embarrassment he may be placed; will look steadily at the most undefined shapes of difficulty and danger, of possible mistake or mischance; nor will they appear

to him more formidable than they really are, for his attention is not distracted—he has but one business, and that is with the object before him. Neither in general conduct nor in particular emergencies are his plans subservient to considerations of rewards, estate, or title: these are not to have precedence in his thoughts, to govern his actions, but to follow in the train of his duty. Such men, in ancient times, were Phocion, Epaminondas, and Philopœmon; and such a man was Sir Philip Sidney, of whom it has been said, that he first taught this country the majesty of honest dealing.'

'The same sentiment is expressed by Lord Bacon, who says, "learning endueth men's minds with a true sense of the frailty of their persons, the casualty of their fortunes, and the dignity of their soul and vocation; so that it is impossible for them to esteem that any greatness of their own fortune can be a true orworthy end of their being and ordainment; and therefore are desirous to give their account to God, and so likewise to their masters under God, (as kings and the states that they serve) in these words; "Ecce tibi lucrefeci," and not "Ecce mihi lucrefeci:" whereas the corrupter sort of mere politicians, that have not their thoughts established by learning in the love and apprehension of duty, nor ever look abroad into universality, do refer all things to themselves, and thrust themselves into the centre of the world, as if all lines should meet in them and their fortunes; never caring, in all tempests, what becomes of the ship of state, so they may save themselves in the cock-boat of their own fortune, whereas men that feel the weight of duty, and know the limits of self-love, use to make good their places' duties, though with peril.'

And Bishop Sprat, in his History of the Royal Saints, says,

'This the legal ratification which the Royal Society has received. And in this place I am to render their public thanks to the right honourable the earl of Clarendon, lord chancellor of England, to Sir Jeffery Palmer, attorney general, and to Sir Heneagh Finch, solicitor general; who by their cheerful concurrence, and free promotion of this confirmation, have wiped

away the aspersion, that has scandalously cast on the profession of the law, that it is an enemy to learning and the civil arts. To shew the falsehood of this reproach, I might instance in many judges and counsellors of all ages, who have been the ornaments of the sciences, as well as of the bar, and courts of justice. But it is enough to declare, that my lord Bacon was a lawyer, and that these eminent officers of the law have completed this foundation of the Royal Society, which was a work well becoming the largeness of his wit to devise, and the greatness of their prudence to establish.'

A BRIEF DISCOURSE

OF

THE HAPPY UNION

OF THE KINGDOMS OF

ENGLAND AND SCOTLAND.

Dedicated in private to his Majesty.*

I DO not find it strange, excellent king, that when Heraclitus, he that was surnamed the obscure, had set forth a certain book which is not now extant, many men took it for a discourse of nature, and many others took it for a treatise of policy. For there is a great affinity and consent between the rules of nature, and the true rules of policy: the one being nothing else but an order in the government of the world; and the other an order in the government of an estate. And therefore the education and erudition of the kings of Persia was in a science which was termed by a name then of great reverence, but now degenerate and taken in the ill part. For the Persian magic, which was the secret literature of their kings, was an application of the contemplations and observations of nature unto a sense politic; taking the fundamental laws of nature, and the

* Printed in 1603, in 12mo.

branches and passages of them, as an original or first model, whence to take and describe a copy and imitation for government.

After this manner the foresaid instructors set before their kings the examples of the celestial bodies, the sun, the moon, and the rest, which have great glory and veneration, but no rest or intermission; being in a perpetual office of motion, for the cherishing, in turn and in course, of inferior bodies: expressing likewise the true manner of the motions of government, which though they ought to be swift and rapid in respect of dispatch and occasions, yet are they to be constant and regular, without wavering or confusion.

So did they represent unto them how the heavens do not enrich themselves by the earth and the seas, nor keep no dead stock, nor untouched treasures of that they draw to them from below; but whatsoever moisture they do levy and take from both elements in vapours, they do spend and turn back again in showers, only holding and storing them up for a time, to the end to issue and distribute them in season.

But chiefly, they did express and expound unto them that fundamental law of nature, whereby all things do subsist and are preserved; which is, that every thing in nature, although it hath its private and particular affection and appetite, and doth follow and pursue the same in small moments, and when it is free and delivered from more general and common respects; yet, nevertheless, when there is question or case for sustaining of the more general, they

forsake their own particularities, and attend and conspire to uphold the public.

So we see the iron in small quantity will ascend and approach to the loadstone upon a particular sympathy: but if it be any quantity of moment, it leaveth its appetite of amity to the loadstone, and, like a good patriot, falleth to the earth, which is the place and region of massy bodies.

So again the water and other like bodies do fall towards the centre of the earth, which is, as was said, their region or country: and yet we see nothing more usual in all water-works and engines, than that the water, rather than to suffer any distraction or disunion in nature, will ascend, forsaking the love to its own region or country, and applying itself to the body next adjoining.

But it were too long a digression to proceed to more examples of this kind. Your majesty yourself did fall upon a passage of this nature in your gracious speech of thanks unto your council, when acknowledging princely their vigilances and well-deservings, it pleased you to note, that it was a success and event above the course of nature, to have so great change with so great a quiet: forasmuch as sudden mutations, as well in state as in nature, are rarely without violence and perturbation: so as still I conclude there is, as was said, a congruity between the principles of nature and policy. And lest that instance may seem to oppone to this assertion, I may even in that particular, with your majesty's favour, offer unto you a type or pattern in nature, much re-

sembling this event in your state; namely, earthquakes, which many of them bring ever much terror and wonder, but no actual hurt; the earth trembling for a moment, and suddenly stablishing in perfect quiet as it was before.

This knowledge then of making the government of the world a mirror for the government of a state, being a wisdom almost lost, whereof the reason I take to be because of the difficulty for one man to embrace both philosophies, I have thought good to make some proof, as far as my weakness and the straits of time will suffer, to revive in the handling of one particular, wherewith now I most humbly present your majesty: for surely, as hath been said, it is a form of discourse anciently used towards kings; and to what king should it be more proper than to a king that is studious to conjoin contemplative virtue and active virtue together?

Your majesty is the first king that had the honour to be "lapis angularis," to unite these two mighty and warlike nations of England and Scotland under one sovereignty and monarchy. It doth not appear by the records and memoirs of any true history, or scarcely by the fiction and pleasure of any fabulous narration or tradition, that ever, of any antiquity, this island of Great Britain was united under one king before this day. And yet there be no mountains nor races of hills, there be no seas or great rivers, there is no diversity of tongue or language that hath invited or provoked this ancient separation or divorce. The lot of Spain was to have the several

kingdoms of that continent, Portugal only excepted, to be united in an age not long past; and now in our age that of Portugal also, which was the last that held out, to be incorporate with the rest. The lot of France hath been, much about the same time, likewise, to have re-annexed unto that crown the several duchies and portions which were in former times dismembered. The lot of this island is the last reserved for your majesty's happy times, by the special providence and favour of God, who hath brought your majesty to this happy conjunction with the great consent of hearts, and in the strength of your years, and in the maturity of your experience. It resteth but that, as I promised, I set before your majesty's princely consideration, the grounds of nature touching the union and commixture of bodies, and the correspondence which they have with the grounds of policy in the conjunction of states and kingdoms.

First, therefore, that position, "Vis unita fortior," being one of the common notions of the mind, needeth not much to be induced or illustrated.

We see the sun when he entereth, and while he continueth under the sign of Leo, causeth more vehement heats than when he is in Cancer, what time his beams are nevertheless more perpendicular. The reason whereof, in great part, hath been truly ascribed to the conjunction and corradiation, in that place of heaven, of the sun with the four stars of the first magnitude, Sirius, Canicula, Cor Leonis, and Cauda Leonis.

So the moon likewise, by ancient tradition, while she is in the same sign of Leo, is said to be at the heart, which is not for any affinity which that place of heaven can have with that part of man's body, but only because the moon is then, by reason of the conjunction and nearness with the stars aforenamed, in greatest strength of influence, and so worketh upon that part in inferior bodies, which is most vital and principal.

So we see waters and liquors, in small quantity, do easily putrify and corrupt; but in large quantity subsist long, by reason of the strength they receive by union.

So in earthquakes, the more general do little hurt, by reason of the united weight which they offer to subvert; but narrow and particular earthquakes have many times overturned whole towns and cities.

So then this point touching the force of union is evident: and therefore it is more fit to speak of the manner of union; wherein again it will not be pertinent to handle one kind of union, which is union by victory, when one body doth merely subdue another, and converteth the same into its own nature, extinguishing and expulsing what part soever of it it cannot overcome. As when the fire converteth the wood into fire, purging away the smoke and the ashes as unapt matter to inflame: or when the body of a living creature doth convert and assimilate food and nourishment, purging and expelling whatsoever it cannot convert. For these representations do

answer in matter of policy to union of countries by conquest, where the conquering state doth extinguish, extirpate, and expulse any part of the state conquered, which it findeth so contrary as it cannot alter and convert it. And therefore, leaving violent unions, we will consider only of natural unions.

The difference is excellent which the best observers in nature do take between "compositio" and "mistio," putting together, and mingling: the one being but a conjunction of bodies in place, the other in quality and consent: the one the mother of sedition and alteration, the other of peace and continuance: the one rather a confusion than an union, the other properly an union. Therefore we see those bodies, which they call "imperfecte mista," last not, but are speedily dissolved. For take, for example, snow or froth, which are compositions of air and water, and in them you may behold how easily they sever and dissolve, the water closing together and excluding the air.

So those three bodies which the alchemists do so much celebrate as the three principles of things; that is to say, earth, water, and oil, which it pleaseth them to term salt, mercury, and sulphur, we see, if they be united only by composition or putting together, how weakly and rudely they do incorporate: for water and earth make but an imperfect slime; and if they be forced together by agitation, yet upon a little settling, the earth resideth in the bottom. So water and oil, though by agitation it be

brought into an ointment, yet after a little settling the oil will float on the top. So as such imperfect mixtures continue no longer than they are forced; and still in the end the worthiest getteth above.

But otherwise it is of perfect mixtures. For we see these three bodies, of earth, water, and oil, when they are joined in a vegetable or mineral, they are so united, as without great subtlety of art and force of extraction, they cannot be separated and reduced into the same simple bodies again. So as the difference between "compositio" and "mistio" clearly set down is this; that "compositio" is the joining or putting together of bodies without a new form: and "mistio" is the joining or putting together of bodies under a new form: for the new form is "commune "vinculum," and without that the old forms will be at strife and discord.

Now to reflect this light of nature upon matter of estate; there hath been put in practice in government these two several kinds of policy in uniting and conjoining of states and kingdoms; the one to retain the ancient form still severed, and only conjoined in sovereignty; the other to superinduce a new form agreeable and convenient to the entire estate. The former of these hath been more usual, and is more easy; but the latter is more happy. For if a man do attentively revolve histories of all nations, and judge truly thereupon, he will make this conclusion, that there was never any states that were good commixtures but the Romans; which

because it was the best state of the world, and is the best example of this point, we will chiefly insist thereupon.

In the antiquities of Rome, Virgil bringeth in Jupiter by way of oracle or prediction speaking of the mixture of the Trojans and the Italians:

> Sermonem Ausonii patrium moresque tenebunt:
> Utque est, nomen erit: commixti corpore tantum
> Subsident Teucri; morem ritusque sacrorum
> Adjiciam: faciamque omnes uno ore Latinos.
> Hinc genus, Ausonio mixtum quod sanguine surget,
> Supra homines, supra ire Deos pietate videbis.
>
> Æn. xii. 834.

Wherein Jupiter maketh a kind of partition or distribution: that Italy should give the language and the laws; Troy should give a mixture of men, and some religious rites; and both people should meet in one name of Latins.

Soon after the foundation of the city of Rome, the people of the Romans and the Sabines mingled upon equal terms: wherein the interchange went so even, that, as Livy noteth, the one nation gave the name to the place, the other to the people. For Rome continued the name, but the people were called Quirites, which was the Sabine word, derived of Cures the country of Tatius.

But that which is chiefly to be noted in the whole continuance of the Roman government; they were so liberal of their naturalizations, as in effect they made perpetual mixtures. For the manner was to grant the same, not only to particular persons,

but to families and lineages; and not only so, but to whole cities and countries. So as in the end it came to that, that Rome was "communis patria," as some of the civilians call it.

So we read of St. Paul, after he had been beaten with rods, and thereupon charged the officer with the violation of the privilege of a citizen of Rome; the captain said to him, "Art thou then a Roman? That "privilege hath cost me dear." To whom St. Paul replied, "But I was so born;" and yet, in another place, St. Paul professeth himself, that he was a Jew by tribe: so as it is manifest that some of his ancestors were naturalized; and so it was conveyed to him and their other descendents.

So we read, that it was one of the first despites that was done to Julius Cæsar, that whereas he had obtained naturalization for a city in Gaul, one of the city was beaten with rods of the consul Marcellus.

So we read in Tacitus, that in the emperor Claudius's time, the nation of Gaul, that part which is called Comata, the wilder part, were suitors to be made capable of the honour of being senators and officers of Rome. His words are these; "Cum de "supplendo senatu agitaretur, primoresque Galliæ, "quæ Comata appellatur, fœdera, et civitatem Roma-"nam pridem assecuti, jus adipiscendorum in urbe "honorum expeterent; multus ea super re variusque "rumor, et studiis diversis, apud principem certaba-"tur." And in the end, after long debate, it was ruled they should be admitted.

So likewise, the authority of Nicholas Machiavel seemeth not to be contemned; who enquiring the causes of the growth of the Roman empire, doth give judgment; there was not one greater than this, that the state did so easily compound and incorporate with strangers.

It is true, that most estates and kingdoms have taken the other course: of which this effect hath followed, that the addition of further empire and territory hath been rather matter of burden, than matter of strength unto them: yea, and farther it hath kept alive the seeds and roots of revolts and rebellions for many ages; as we may see in a fresh and notable example of the kingdom of Arragon: which, though it were united to Castile by marriage, and not by conquest; and so descended in hereditary union by the space of more than an hundred years; yet because it was continued in a divided government, and not well incorporated and cemented with the other crowns, entered into a rebellion upon point of their "fueros," or liberties, now of very late years.

Now to speak briefly of the several parts of that form, whereby states and kingdoms are perfectly united, they are, besides the sovereignty itself, four in number; union in name, union in language, union in laws, union in employments.

For name, though it seem but a superficial and outward matter, yet it carrieth much impression and enchantment: the general and common name of Græcia made the Greeks always apt to unite, though

otherwise full of divisions amongst themselves, against other nations whom they called barbarous. The Helvetian name is no small band to knit together their leagues and confederacies the faster. The common name of Spain, no doubt, hath been a special means of the better union and conglutination of the several kingdoms of Castile, Arragon, Granada, Navarre, Valentia, Catalonia, and the rest, comprehending also now lately Portugal.

For language, it is not needful to insist upon it; because both your majesty's kingdoms are of one language, though of several dialects; and the difference is so small between them, as promiseth rather an enriching of one language than a continuance of two.

For laws, which are the principal sinews of government, they be of three natures; "jura," which I will term freedoms or abilities, "leges," and "mores."

For abilities and freedoms, they were amongst the Romans of four kinds, or rather degrees. "Jus connubii, jus civitatis, jus suffragii," and "jus petitionis" or "honorum." "Jus connubii" is a thing in these times out of use: for marriage is open between all diversities of nations. "Jus civitatis" answereth to that we call denization or naturalization. "Jus suffragii" answereth to the voice in parliament. "Jus petitionis" answereth to place in council or office. And the Romans did many times sever these freedoms; granting "Jus connubii, sine civitate," and "civitatem, sine suffragio," and "suffra-

" gium, sine jure petitionis," which was commonly with them the last.

For those we called " leges," it is a matter of curiosity and inconveniency, to seek either to extirpate all particular customs, or to draw all subjects to one place or resort of judicature and session. It sufficeth there be an uniformity in the principal and fundamental laws, both ecclesiastical and civil: for in this point the rule holdeth which was pronounced by an ancient father, touching the diversity of rites in the Church; for finding the vesture of the queen in the psalm, which did prefigure the Church, was of divers colours; and finding again that Christ's coat was without a seam, he concluded well, " in veste " varietas sit, scissura non sit."

For manners: a consent in them is to be sought industriously, but not to be enforced: for nothing amongst people breedeth so much pertinacy in holding their customs, as sudden and violent offer to remove them.

And as for employments, it is no more, but an indifferent hand, and execution of that verse:

Tros, Tyriusque mihi nullo discrimine agetur.

There remaineth only to remember out of the grounds of nature the two conditions of perfect mixture; whereof the former is time: for the natural philosophers say well, that " compositio" is " opus ho- " minis," and " mistio opus naturæ." For it is the duty of man to make a fit application of bodies together: but the perfect fermentation and incorporation of them must be left to time and nature; and un-

natural hasting thereof doth disturb the work, and not dispatch it.

So we see, after the graft is put into the stock and bound, it must be left to time and nature to make that "continuum," which at the first was but "contiguum." And it is not any continual pressing or thrusting together that will prevent nature's season, but rather hinder it. And so in liquors, those commixtures which are at the first troubled, grow after clear and settled by the benefit of rest and time.

The second condition is, that the greater draw the less. So we see when two lights do meet, the greater doth darken and dim the less. And when a smaller river runneth into a greater, it loseth both its name and stream. And hereof, to conclude, we see an excellent example in the kingdoms of Judah and Israel. The kingdom of Judah contained two tribes; the kingdom of Israel contained ten. King David reigned over Judah for certain years; and, after the death of Ishbosheth, the son of Saul, obtained likewise the kingdom of Israel. This union continued in him, and likewise in his son Solomon, by the space of seventy years, at least, between them both: but yet, because the seat of the kingdom was kept still in Judah, and so the less sought to draw the greater: upon the first occasion offered, the kingdoms brake again, and so continued ever after.

Thus having in all humbleness made oblation to your majesty of these simple fruits of my devotion and studies, I do wish, and do wish it not in the na-

ture of an impossibility, to my apprehension, that this happy union of your majesty's two kingdoms of England and Scotland, may be in as good an hour, and under the like divine providence, as that was between the Romans and the Sabines.

CERTAIN

ARTICLES OR CONSIDERATIONS

TOUCHING

THE UNION OF THE KINGDOMS

OF

ENGLAND AND SCOTLAND.

Collected and dispersed for his Majesty's better Service.

YOUR majesty, being, I doubt not, directed and conducted by a better oracle than that which was given for light to Æneas in his peregrination, "Antiquam "exquirite matrem," hath a royal, and indeed an heroical desire to reduce these two kingdoms of England and Scotland into the unity of their ancient mother kingdom of Britain. Wherein as I would gladly applaud unto your majesty, or sing aloud that hymn or anthem, "Sic itur ad astra;" so in a more soft and submissive voice, I must necessarily remember unto your majesty that warning or caveat, "Ardua quæ pulchra:" it is an action that requireth, yea, and needeth much, not only of your majesty's wisdom, but of your felicity. In this argument I presumed at your majesty's first entrance to write a few lines, indeed scholastically and speculatively, and not actively or politicly, as I held it fit for me at

that time; when neither your majesty was in that your desire declared, nor myself in that service used or trusted. But now that both your majesty hath opened your desire and purpose with much admiration, even of those who give it not so full an approbation, and that myself was by the Commons graced with the first vote of all the Commons selected for that cause; not in any estimation of my ability, for therein so wise an assembly could not be so much deceived, but in an acknowledgment of my extreme labours and integrity; in that business I thought myself every way bound, both in duty to your majesty, and in trust to that house of parliament, and in consent to the matter itself, and in conformity to mine own travels and beginnings, not to neglect any pains that may tend to the furtherance of so excellent a work; wherein I will endeavour that that which I shall set down be "nihil minus "quam verba:" for length and ornament of speech are to be used for persuasion of multitudes, and not for information of kings; especially such a king as is the only instance that ever I knew to make a man of Plato's opinion, "that all knowledge is but remem- "brance, and that the mind of man knoweth all "things, and demandeth only to have her own "notions excited and awaked:" which your majesty's rare and indeed singular gift and faculty of swift apprehension, and infinite expansion or multiplication of another man's knowledge by your own, as I have often observed, so I did extremely admire in Goodwin's cause, being a matter full of

secrets and mysteries of our laws, merely new unto you, and quite out of the path of your education, reading, and conference: wherein, nevertheless, upon a spark of light given, your majesty took in so dextrously and profoundly, as if you had been indeed "anima legis," not only in execution, but in understanding: the remembrance whereof, as it will never be out of my mind, so it will always be a warning to me to seek rather to excite your judgment briefly, than to inform it tediously; and if in a matter of that nature, how much more in this, wherein your princely cogitations have wrought themselves, and been conversant, and wherein the principal light proceeded from yourself.

And therefore my purpose is only to break this matter of the union into certain short articles and questions, and to make a certain kind of anatomy or analysis of the parts and members thereof: not that I am of opinion that all the questions which I now shall open, were fit to be in the consultation of the commissioners propounded. For I hold nothing so great an enemy to good resolution, as the making of too many questions; especially in assemblies which consist of many. For princes, for avoiding of distraction, must take many things by way of admittance; and if questions must be made of them, rather to suffer them to arise from others, than to grace them and authorise them as propounded from themselves. But unto your majesty's private consideration, to whom it may be better sort with me rather to speak as a remembrancer than as a coun-

sellor, I have thought good to lay before you all the branches, lineaments, and degrees of this union, that upon the view and consideration of them and their circumstances, your majesty may the more clearly discern, and more readily call to mind which of them is to be embraced, and which to be rejected: and of these, which are to be accepted, which of them is presently to be proceeded in, and which to be put over to farther time. And again, which of them shall require authority of parliament, and which are fitter to be effected by your majesty's royal power and prerogative, or by other policies or means; and lastly, which of them is liker to pass with difficulty and contradiction, and which with more facility and smoothness.

First, therefore, to begin with that question, that, I suppose, will be out of question.

Whether it be not meet, that the statutes, which were made touching Scotland or the Scotish nation, while the kingdoms stood severed, be repealed?

It is true, there is a diversity in these; for some of these laws consider Scotland as an enemy's country; other laws consider it as a foreign country only: as for example; the law of Rich. II. anno 7. which prohibiteth all armour or victual to be carried to Scotland; and the law of 7 of K. Henry VII. that enacteth all the Scotish men to depart the realm within a time prefixed. Both these laws, and some others, respect Scotland as a country of hostility: but the law of 22 of Edward IV. that endueth Berwick with the liberty of a staple, where all

Scotish merchandises should resort that should be uttered for England, and likewise all English merchandises that should be uttered for Scotland; this law beholdeth Scotland only as a foreign nation; and not so much neither; for there have been erected staples in towns of England for some commodities, with an exclusion and restriction of other parts of England.

But this is a matter of the least difficulty; your majesty shall have a calendar made of the laws, and a brief of the effect; and so you may judge of them: and the like or reciproque is to be done by Scotland for such laws as they have concerning England and the English nation.

The second question is, what laws, customs, commissions, officers, garrisons, and the like, are to be put down, discontinued or taken away upon the borders of both realms?

To this point, because I am not acquainted with the orders of the marches, I can say the less.

Herein falleth that question, whether that the tenants, who hold their tenants' rights in a greater freedom and exemption, in consideration of their service upon the borders, and that the countries themselves, which are in the same respect discharged of subsidies and taxes, should not now be brought to be in one degree with other tenants and countries; "nam cessante causa, tollitur effectus?" Wherein, in my opinion, some time would be given; "quia "adhuc eorum messis in herba est:" but some present ordinance would be made to take effect at a future

time, considering it is one of the greatest points and marks of the division of the kingdoms. And because reason doth dictate, that where the principal solution of continuity was, there the healing and consolidating plaster should be chiefly applied; there would be some farther device for the utter and perpetual confounding of those imaginary bounds, as your majesty termeth them: and therefore it would be considered, whether it were not convenient to plant and erect at Carlisle or Berwick some council or court of justice, the jurisdiction whereof might extend part into England and part into Scotland, with a commission not to proceed precisely, or merely according to the laws and customs either of England or Scotland, but mixtly, according to instructions by your majesty to be set down, after the imitation and precedent of the council of the marches here in England, erected upon the union of Wales?

The third question is that which many will make a great question of, though perhaps your majesty will make no question of it; and that is, whether your majesty should not make a stop or stand here, and not to proceed to any farther union, contenting yourself with the two former articles or points.

For it will be said, that we are now well, thanks be to God and your majesty, and the state of neither kingdom is to be repented of; and that it is true which Hippocrates saith, that "Sana corpora difficile "medicationes ferunt," it is better to make alterations in sick bodies than in sound. The consideration

of which point will rest upon these two branches: what inconveniences will ensue with time, if the realms stand as they are divided, which are yet not found nor sprung up. For it may be the sweetness of your majesty's first entrance, and the great benefit that both nations have felt thereby, hath covered many inconveniences: which, nevertheless, be your majesty's government never so gracious and politic, continuance of time and the accidents of time may breed and discover, if the kingdoms stand divided.

The second branch is; allow no manifest or important peril or inconvenience should ensue of the continuing of the kingdoms divided, yet on the other side, whether that upon the farther uniting of them, there be not like to follow that addition and increase of wealth and reputation, as is worthy your majesty's virtues and fortune, to be the author and founder of, for the advancement and exaltation of your majesty's royal posterity in time to come?

But admitting that your majesty should proceed to this more perfect and entire union, wherein your majesty may say, "Majus opus moveo;" to enter into the parts and degrees thereof, I think fit first to set down, as in a brief table, in what points the nations stand now at this present time already united, and in what points yet still severed and divided, that your majesty may the better see what is done, and what is to be done; and how that which is to be done is to be inferred upon that which is done.

The points wherein the nations stand already united are:

In sovereignty.

In the relative thereof, which is subjection.

In religion.

In continent.

In language.

And now lastly, by the peace by your majesty concluded with Spain, in leagues and confederacies: for now both nations have the same friends and the same enemies.

Yet notwithstanding there is none of the six points, wherein the union is perfect and consummate; but every of them hath some scruple or rather grain of separation inwrapped and included in them.

For the sovereignty, the union is absolute in your majesty and your generation; but if it should so be, which God of his infinite mercy defend, that your issue should fail, then the descent of both realms doth resort to the several lines of the several bloods royal.

For subjection, I take the law of England to be clear, what the law of Scotland is I know not, that all Scotsmen from the very instant of your majesty's reign begun are become denizens, and the "post-"nati" are naturalized subjects of England for the time forwards: for by our laws none can be an alien but he that is of another allegiance than our sovereign lord the king's: for there be but two sorts of aliens, whereof we find mention in our law, an alien ami, and an alien enemy; whereof the former is a subject of a state in amity with the king, and the latter a subject of a state in hostility: but

whether he be one or other, it is an essential difference unto the definition of an alien, if he be not of the king's allegiance; as we see it evidently in the precedent of Ireland, who since they were subjects to the crown of England, have ever been inheritable and capable as natural subjects; and yet not by any statute or act of parliament, but merely by the common-law, and the reason thereof. So as there is no doubt, that every subject of Scotland was, and is in like plight and degree, since your majesty's coming in, as if your majesty had granted particularly your letters of denization or naturalization to every of them, and the "post-nati" wholly natural. But then on the other side, for the time backwards, and for those that were "ante nati," the blood is not by law naturalized, so as they cannot take it by descent from their ancestors without act of parliament: and therefore in this point there is a defect in the union of subjection.

For matter of religion, the union is perfect in points of doctrine; but in matter of discipline and government it is imperfect.

For the continent, it is true there are no natural boundaries of mountains or seas, or navigable rivers; but yet there are badges and memorials of borders; of which points I have spoken before.

For the language, it is true the nations are "unius labii," and have not the first curse of disunion, which was confusion of tongues, whereby one understood not another. But yet the dialect is differing, and it remaineth a kind of mark of distinc-

tion. But for that, " tempori permittendum," it is to be left to time. For considering that both languages do concur in the principal office and duty of a language, which is to make a man's self understood: for the rest, it is rather to be accounted, as was said, a diversity of dialect than of language: and, as I said in my first writing, it is like to bring forth the enriching of one language, by compounding and taking in the proper and significant words of either tongue, rather than a continuance of two languages.

For leagues and confederacies, it is true, that neither nation is now in hostility with any state, wherewith the other nation is in amity: but yet so, as the leagues and treaties have been concluded with either nation respectively, and not with both jointly; which may contain some diversity of articles of straitness of amity with one more than with the other.

But many of these matters may perhaps be of that kind, as may fall within that rule, " In veste " varietas sit, scissura non sit."

Now to descend to the particular points wherein the realms stand severed and divided, over and besides the former six points of separation, which I have noted and placed as defects or abatements of the six points of the union, and therefore shall not need to be repeated: the points, I say, yet remaining, I will divide into external and internal.

The external points therefore of the separation are four.

1. The several crowns, I mean the ceremonial and material crowns.

2. The second is the several names, stiles, or appellations.

3. The third is the several prints of the seals.

4. The fourth is the several stamps or marks of the coins or moneys.

It is true, that the external are in some respect and parts much mingled and interlaced with considerations internal; and that they may be as effectual to the true union, which must be the work of time, as the internal, because they are operative upon the conceits and opinions of the people; the uniting of whose hearts and affections is the life and true end of this work.

For the ceremonial crowns, the question will be, whether there shall be framed one new imperial crown of Britain to be used for the times to come? Also, admitting that to be thought convenient, whether in the frame thereof there shall not be some reference to the crowns of Ireland and France?

Also whether your majesty should repeat or iterate your own coronation and your queen's, or only ordain that such new crown shall be used by your posterity hereafter?

The difficulties will be in the conceit of some inequality, whereby the realm of Scotland may be thought to be made an accession unto the realm of England. But that resteth in some circumstances; for the compounding of the two crowns is equal; the calling of the new crown the crown of Britain is

qual. Only the place of coronation, if it shall be at Westminster, which is the ancient, august, and acred place for the kings of England, may seem to nake an inequality. And again, if the crown of Scotland be discontinued, then that ceremony, which I hear is used in the parliament of Scotland in the absence of the kings, to have the crowns carried in solemnity, must likewise cease.

For the name, the main question is, whether the contracted name of Britain shall be by your majesty used, or the divided names of England and Scotland?

Admitting there shall be an alteration, then the case will require these inferior questions:

First, whether the name of Britain shall only be used in your majesty's stile, where the entire stile is recited; and in all other forms the divided names to remain both of the realms and of the people? or otherwise, that the very divided names of realms and people shall likewise be changed or turned into special or subdivided names of the general name; that is to say, for example, whether your majesty in your stile shall denominate yourself king of Britain, France, and Ireland, &c. and yet nevertheless, in any commission, writ, or otherwise, where your majesty mentions England or Scotland, you shall retain the ancient names, as "secundum consuetudi-"nem regni nostri Angliæ;" or whether those divided names shall be for ever lost and taken away, and turned into the subdivisions of South-Britain and North-Britain, and the people to be South-Britons

and North-Britons? And so in the example afore said, the tenour of the like clause to run "secundum "consuetudinem Britanniæ australis."

Also, if the former of these shall be thought convenient, whether it were not better for your majesty to take that alteration of stile upon you by proclamation, as Edward the third did the stile of France than to have it enacted by parliament?

Also, in the alteration of the stile, whether it were not better to transpose the kingdom of Ireland and put it immediately after Britain, and so place the islands together; and the kingdom of France being upon the continent, last; in regard that these islands of the western ocean seem by nature and providence an entire empire in themselves; and also, that there was never king of England so entirely possest of Ireland, as your majesty is: so as your stile to run king of Britain, Ireland, and the islands adjacent, and of France, &c.

The difficulties in this have been already, throughly beaten over; but they gather but to two heads.

The one, point of honour and love to the former names.

The other, doubt, lest the alteration of the name may induce and involve an alteration of the laws and policies of the kingdom; both which, if your majesty shall assume the stile by proclamation, and not by parliament, are in themselves satisfied: for then the usual names must needs remain in writs and records, the forms whereof cannot be altered but by act of parliament, and so the point of honour satisfied.

And again, your proclamation altereth no law, and so the scruple of a tacit or implied alteration of laws likewise satisfied. But then it may be considered, whether it were not a form of the greatest honour, if the parliament, though they did not enact it, yet should become suitors and petitioners to your majesty to assume it?

For the seals, that there should be but one great seal of Britain, and one chancellor, and that there should only be a seal in Scotland for processes and ordinary justice; and that all patents of grants of lands or otherwise, as well in Scotland as in England, should pass under the great seal here, kept about your person; it is an alteration internal, whereof I do not now speak.

But the question in this place is, whether the great seals of England and Scotland should not be changed into one and the same form of image and superscription of Britain, which, nevertheless, is requisite should be with some one plain or manifest alteration, lest there be a buz, and suspect, that grants of things in England may be passed by the seal of Scotland, or "e converso?"

Also, whether this alteration of form may not be done without act of parliament, as the great seals have used to be heretofore changed as to their impressions?

For the moneys, as to the real and internal consideration thereof, the question will be, whether your majesty shall not continue two mints? which, the

distance of territory considered, I suppose will be of necessity.

Secondly, how the standards, if it be not already done, as I hear some doubt made of it in popular rumour, may be reduced into an exact proportion for the time to come; and likewise the computation, tale, or valuation to be made exact for the moneys already beaten?

That done, the last question is, which is only proper to this place, whether the stamp or the image and superscription of Britain for the time forwards should not be made the self-same in both places, without any difference at all? A matter also which may be done, as our law is, by your majesty's prerogative without act of parliament.

These points are points of demonstration, "ad "faciendum populum," but so much the more they go to the root of your majesty's intention, which is to imprint and inculcate into the hearts and heads of the people, that they are one people and one nation.

In this kind also I have heard it pass abroad in speech of the erection of some new order of knighthood, with a reference to the union, and an oath appropriate thereunto, which is a point likewise deserves a consideration. So much for the external points.

The internal points of separation are as followeth.

1. Several parliaments.

2. Several councils of state.
3. Several officers of the crown.
4. Several nobilities.
5. Several laws.
6. Several courts of justice, trials, and processes.
7. Several receits and finances.
8. Several admiralties and merchandisings.
9. Several freedoms and liberties.
10. Several taxes and imposts.

As touching the several states ecclesiastical, and the several mints and standards, and the several articles and treaties of intercourse with foreign nations, I touched them before.

In these points of the strait and more inward union, there will intervene one principal difficulty and impediment, growing from that root, which Aristotle in his Politics maketh to be the root of all division and dissension in commonwealths, and that is equality and inequality. For the realm of Scotland is now an ancient and noble realm, substantive of itself.

But when this island shall be made Britain, then Scotland is no more to be considered as Scotland, but as a part of Britain; no more than England is to be considered as England, but as a part likewise of Britain; and consequently neither of these are to be considered as things entire of themselves, but in the proportion that they bear to the whole. And therefore let us imagine, "Nam id mente possumus, quod "actu non possumus," that Britain had never been divided, but had ever been one kingdom; then that

part of soil or territory, which is comprehended under the name of Scotland, is in quantity, as I have heard it esteemed, how truly I know not, not past a third part of Britain; and that part of soil or territory which is comprehended under the name of England, is two parts of Britain, leaving to speak of any difference of wealth or population, and speaking only of quantity. So then if, for example, Scotland should bring to parliament as much nobility as England, then a third part should countervail two parts; "nam si inæqualibus æqualia addas, omnia erunt "inæqualia." And this, I protest before God and your majesty, I do speak not as a man born in England, but as a man born in Britain. And therefore to descend to the particulars:

For the parliaments, the consideration of that point will fall into four questions.

1. The first, what proportion shall be kept between the votes of England and the votes of Scotland?

2. The second, touching the manner of proposition, or possessing of the parliament of causes there to be handled; which in England is used to be done immediately by any member of the parliament, or by the prolocutor; and in Scotland is used to be done immediately by the lords of the articles; whereof the one form seemeth to have more liberty, and the other more gravity and maturity: and therefore the question will be whether of these shall yield to other, or whether there should not be a mixture of both, by some commissions precedent to every parliament, in

the nature of lords of the articles, and yet not excluding the liberty of propounding in full parliament afterwards?

3. The third, touching the orders of parliament, how they may be compounded, and the best of either taken?

4. The fourth, how those, which by inheritance or otherwise have offices of honour and ceremony in both the parliaments, as the lord steward with us, &c. may be satisfied, and duplicity accommodated?

For the councils of estate, while the kingdoms stand divided, it should seem necessary to continue several councils; but if your majesty should proceed to a strict union, then howsoever your majesty may establish some provincial councils in Scotland, as there is here of York, and in the marches of Wales, yet the question will be, whether it will not be more convenient for your majesty, to have but one privy council about your person, whereof the principal officers of the crown of Scotland to be for dignity sake, howsoever their abiding and remaining may be as your majesty shall employ their service? But this point belongeth merely and wholly to your majesty's royal will and pleasure.

For the officers of the crown, the consideration thereof will fall into these questions.

First, in regard of the latitude of your kingdom and the distance of place, whether it will not be matter of necessity to continue the several officers, because of the impossibility for the service to be performed by one?

The second, admitting the duplicity of officers should be continued, yet whether there should not be a difference, that one should be the principal officer, and the other to be but special and subaltern? As for example, one to be chancellor of Britain, and the other to be chancellor with some special addition, as here of the duchy, &c.

The third, if no such specialty or inferiority be thought fit, then whether both officers should not have the title and the name of the whole island and precincts? as the lord Chancellor of England to be lord Chancellor of Britain, and the lord Chancellor of Scotland to be lord Chancellor of Britain, but with several provisos that they shall not intromit themselves but within their several precincts.

For the nobilities, the consideration thereof will fall into these questions.

The first, of their votes in parliament, which was touched before, what proportion they shall bear to the nobility of England? wherein if the proportion which shall be thought fit be not full, yet your majesty may, out of your prerogative, supply it; for although you cannot make fewer of Scotland, yet you may make more of England.

The second is touching the place and precedence wherein to marshal them according to the precedence of England in your majesty's stile, and according to the nobility of Ireland; that is, all English earls first, and then Scotish, will be thought unequal for Scotland. To marshal them according to antiquity, will be thought unequal for England. Because I hear

their nobility is generally more ancient: and therefore the question will be, whether the indifferentest way were not to take them interchangeably; as for example, first, the ancient earl of England, and then the ancient earl of Scotland, and so "alternis "vicibus?"

For the laws, to make an entire and perfect union, it is a matter of great difficulty and length, both in the collecting of them, and in the passing of them.

For first, as to the collecting of them, there must be made by the lawyers of either nation a digest under titles of their several laws and customs, as well common laws as statutes, that they may be collated and compared, and that the diversities may appear and be discerned of. And for the passing of them, we see by experience that "patrius mos" is dear to all men, and that men are bred and nourished up in the love of it; and therefore how harsh changes and innovations are. And we see likewise what disputation and argument the alteration of some one law doth cause and bring forth, how much more the alteration of the whole corps of the law? Therefore the first question will be, whether it be not good to proceed by parts, and to take that that is most necessary, and leave the rest to time? The parts therefore or subject of laws, are for this purpose fittest distributed according to that ordinary division of criminal and civil, and those of criminal causes into capital and penal.

The second question therefore is, allowing the

general union of laws to be too great a work to embrace; whether it were not convenient that cases capital were the same in both nations; I say the cases, I do not speak of the proceedings or trials; that is to say, whether the same offences were not fit to be made treason or felony in both places?

The third question is, whether cases penal, though not capital, yet if they concern the public state, or otherwise the dicipline of manners, were not fit likewise to be brought into one degree, as the case of misprision of treason, the case of "præmunire," the case of fugitives, the case of incest, the case of simony, and the rest?

But the question that is more urgent than any of these is, whether these cases at the least, be they of an higher or inferior degree, wherein the fact committed, or act done in Scotland, may prejudice the state and subjects of England, or "e converso," are not to be reduced into one uniformity of law and punishment? As for example, a perjury committed in a court of justice in Scotland, cannot be prejudicial in England, because depositions taken in Scotland cannot be produced and used here in England. But a forgery of a deed in Scotland, I mean with a false date of England, may be used and given in evidence in England. So likewise the depopulating of a town in Scotland doth not directly prejudice the state of England: but if an English merchant shall carry silver and gold into Scotland, as he may, and thence trnsport it into foreign parts, this prejudiceth the state of England, and may be an evasion to all

the laws of England ordained in that case; and therefore had need to be bridled with as severe a law in Scotland as it is here in England.

Of this kind there are many laws.

The law of the 5th of Richard II. of going over without licence, if there be not the like law in Scotland, will be frustrated and evaded: for any subject of England may go first into Scotland, and thence into foreign parts.

So the laws prohibiting transportation of sundry commodities, as gold, and silver, ordnance, artillery, corn, &c. if there be not a correspondence of laws in Scotland, will in like manner be deluded and frustrate; for any English merchant or subject may carry such commodities first into Scotland, as well as he may carry them from port to port in England; and out of Scotland into foreign parts, without any peril of law.

So libels may be devised and written in Scotland, and published and scattered in England.

Treasons may be plotted in Scotland and executed in England.

And so in many other cases, if there be not the like severity of law in Scotland to restrain offences that there is in England, whereof we are here ignorant whether there be or no, it will be a gap or stop even for English subjects to escape and avoid the laws of England.

But for treasons, the best is that by the statute of 26 K. Henry VIII. cap. 13, any treason committed in Scotland may be proceeded with in England, as

well as treasons committed in France, Rome, or elsewhere.

For courts of justice, trials, processes, and other administration of laws, to make any alteration in either nation, it will be a thing so new and unwonted to either people, that it may be doubted it will make the adminstration of justice, which of all other things ought to be known and certain as a beaten way, to become intricate and uncertain. And besides, I do not see that the severalty of administration of justice though it be by court sovereign of last resort, I mean without appeal or error, is any impediment at all to the union of a kingdom: as we see by experience in the several courts of parliament in the kingdom of France. And I have been always of opinion, that the subjects of England do already fetch justice somewhat far off, more than in any nation that I know, the largeness of the kingdom considered, though it be holpen in some part by the circuits of the judges; and the two councils at York, and in the marches of Wales established.

But it may be a good question, whether, as "commune vinculum" of the justice of both nations, your majesty should not erect some court about your person, in the nature of the grand council of France: to which court you might, by way of evocation, draw causes from the ordinary judges of both nations; for so doth the French king from all the courts of parliament in France; many of which are more remote from Paris than any part of Scotland is from London.

For receits and finances, I see no question will arise, in regard it will be matter of necessity to establish in Scotland a receit of treasure for payments and erogations to be made in those parts: and for the treasure of spare, in either receits, the custodies thereof may well be several; considering by your majesty's commandment they may be at all times removed or disposed according to your majesty's occasions.

For the patrimonies of both crowns, I see no question will arise, except your majesty would be pleased to make one compounded annexation, for an inseparable patrimony to the crown out of the lands of both nations: and so the like for the principality of Britain, and for other appennages of the rest of your children: erecting likewise such duchies and honours, compounded of the possessions of both nations, as shall be thought fit.

For admiralty or navy, I see no great question will arise; for I see no inconvenience for your majesty to continue shipping in Scotland. And for the jurisdictions of the admiralties, and the profits and casualties of them, they will be respective unto the coasts, over-against which the seas lie and are situated; as it is here with the admiralties of England.

And for merchandising, it may be a question, whether that the companies, of the merchant adventurers, of the Turkey merchants, and the Muscovy merchants, if they shall be continued, should not be compounded of merchants of both nations, English

and Scotish. For to leave trade free in the one nation, and to have it restrained in the other, may percase breed some inconvenience.

For freedoms and liberties, the charters of both nations may be reviewed; and of such liberties as are agreeable and convenient for the subjects and people of both nations, one great charter may be made and confirmed to the subjects of Britain; and those liberties which are peculiar or proper to either nation, to stand in state as they do.

But for imposts and customs, it will be a great question how to accommodate them and reconcile them: for if they be much easier in Scotland than they be here in England, which is a thing I know not, then this inconvenience will follow; that the merchants of England may unlade in the ports of Scotland: and this kingdom to be served from thence, and your majesty's customs abated.

And for the question, whether the Scotish merchants should pay strangers custom in England? that resteth upon the point of naturalization, which I touched before.

Thus have I made your majesty a brief and naked memorial of the articles and points of this great cause, which may serve only to excite and stir up your majesty's royal judgment, and the judgment of wiser men whom you will be pleased to call to it; wherein I will not presume to persuade or dissuade any thing; nor to interpose mine own opinion, but do expect light from your majesty's royal directions; unto the which I shall ever submit my judgment,

and apply my travails. And I most humbly pray your majesty, in this which is done to pardon my errors, and to cover them with my good intention and meaning, and desire I have to do your majesty service, and to acquit the trust that was reposed in me, and chiefly in your majesty's benign and gracious acceptation.

THE MOST HUMBLE

CERTIFICATE OR RETURN

OF THE

COMMISSIONERS OF ENGLAND AND SCOTLAND,

AUTHORISED TO TREAT OF

AN UNION FOR THE WEAL OF BOTH REALMS.

2 Jac. I. [Prepared, but Altered.]

We the commissioners for England and Scotland respectively named and appointed, in all humbleness do signify to his most excellent majesty, and to the most honourable high courts of parliament of both realms, that we have assembled ourselves, consulted and treated according to the nature and limits of our commission; and forasmuch as we do find that hardly within the memory of all times, or within the compass of the universal world, there can be shewed forth a fit example or precedent of the work we have in hand concurring in all points material, we thought ourselves so much the more bound to resort to the infallible and original grounds of nature and common reason, and freeing ourselves from the leading or misleading of examples, to insist and fix our considerations upon the individual business in hand, without wandering or discourses.

It seemed therefore unto us a matter demonstra-

tive by the light of reason, that we were in first place to begin with the remotion and abolition of all manner of hostile, envious, or malign laws on either side, being in themselves mere temporary, and now by time become directly contrary to our present most happy estate; which laws, as they are already dead in force and vigour, so we thought fit now to wish them buried in oblivion; that by the utter extinguishment of the memory of discords past, we may avoid all seeds of relapse into discords to come.

Secondly, as matter of nature not unlike the former, we entered into consideration of such limitany constitutions as served but for to obtain a form of justice between subjects under several monarchs, and did in the very grounds and motives of them presuppose incursions, and intermixture of hostility: all which occasions, as they are in themselves now vanished and done away, so we wish the abolition and cessation thereof to be declared.

Thirdly, for so much as the principal degree to union is communion and participation of mutual commodities and benefits, it appeared to us to follow next in order, that the commerce between both nations be set open and free, so as the commodities and provisions of either may pass and flow to and fro, without any stops or obstructions, into the veins of the whole body, for the better sustentation and comfort of all the parts: with caution nevertheless, that the vital nourishment be not so drawn into one

part, as it may endanger a consumption and withering of the other.

Fourthly, after the communion and participation by commerce, which can extend but to the transmission of such commodities as are moveable, personal, and transitory, there succeeded naturally that other degree, that there be made a mutual endowment and donation of either realm towards other of the abilities and capacities to take and enjoy things which are permanent, real and fixed; as namely, freehold and inheritance, and the like: and that as well the internal and vital veins of blood be opened from interruption and obstruction in making pedigree, and claiming by descent, as the external and elemental veins of passage and commerce; with reservation nevertheless unto the due time of such abilities and capacities only, as no power on earth can confer without time and education.

And lastly, because the perfection of this blessed work consisteth in the union, not only of the solid parts of the estate, but also in the spirit and sinews of the same, which are the laws and government, which nevertheless are already perfectly united in the head, but require a further time to be united in the bulk and frame of the whole body; in contemplation hereof we did conceive that the first step thereunto was to provide, that the justice of either realm should aid and assist, and not frustrate and interrupt the justice of the other, specially in sundry cases criminal; so that either realm may not be abused by malefactors

as a sanctuary or place of refuge, to avoid the condign punishment of their crimes and offences.

All which several points, as we account them, summed up and put together, but as a degree or middle term to the perfection of this blessed work; so yet we conceived them to make a just and fit period for our present consultation and proceeding.

And for so much as concerneth the manner of our proceedings, we may truly make this attestation unto ourselves, that as the mark we shot at was union and unity, so it pleased God in the handling thereof to bless us with the spirit of unity, insomuch as from our first sitting unto the breaking up of our assembly, a thing most rare, the circumstance of the cause and persons considered, there did not happen or intervene, neither in our debates or arguments, any manner of altercation or strife of words; nor in our resolutions any variety or division of votes, but the whole passed with an unanimity and uniformity of consent: and yet so, as we suppose, there was never in any consultation greater plainness and liberty of speech, argument and debate, replying, contradicting, recalling any thing spoken where cause was, expounding any matter ambiguous or mistaken; and all other points of free and friendly interlocution and conference, without cavillations, advantages, or overtakings: a matter that we cannot ascribe to the skill or temper of our own carriage, but to the guiding and conducting of God's holy providence and will, the true author of all unity and agreement. Neither did we, where the business

required, rest so upon our own sense and opinions, but we did also aid and assist ourselves, as well with the reverend opinion of judges and persons of great science and authority in the laws, and also with the wisdom and experience of merchants, and men expert in commerce. In all which our proceedings, notwithstanding, we are so far from pretending or aiming at any prejudication, either of his royal majesty's sovereign and high wisdom, which we do most dutifully acknowledge to be able to pierce and penetrate far beyond the reach of our capacities; or of the solid and profound judgment of the high courts of parliament of both realms, as we do in all humbleness submit our judgments and doings to his sacred majesty, and to the parliaments, protesting our sincerity, and craving gracious and benign construction and acceptation of our travails.

We therefore with one mind and consent have agreed and concluded, that there be propounded and presented to his majesty and the parliament of both realms, these articles and propositions following. . .

A SPEECH

USED BY

SIR FRANCIS BACON, KNIGHT,

IN THE HONOURABLE HOUSE OF COMMONS, QUINTO JACOBI,

CONCERNING THE ARTICLE OF

THE GENERAL NATURALIZATION

OF

THE SCOTISH NATION.

It may please you, Mr. Speaker, preface I will use none, but put myself upon your good opinion, to which I have been accustomed beyond my deservings; neither will I hold you in suspense what way I will choose, but now at the first I declare myself, that I mean to counsel the house to naturalize this nation: wherein, nevertheless, I have a request to make unto you, which is of more efficacy to the purpose I have in hand than all that I shall say afterwards. And it is the same request, which Demosthenes did more than once, in great causes of estate, make to the people of Athens, "ut cum calculis suffragiorum "sumant magnanimitatem reipublicæ," that when they took into their hands the balls, whereby to give their voices, according as the manner of them was, they would raise their thoughts, and lay aside those considerations, which their private vocations and

degrees might minister and represent unto them, and would take upon them cogitations and minds agreeable to the dignity and honour of the estate.

For, Mr. Speaker, as it was aptly and sharply said by Alexander to Parmenio, when upon their recital of the great offers which Darius made, Parmenio said unto him, "I would accept these offers, "were I as Alexander:" he turned it upon him again, "So would I," saith he, "were I as Parmenio." So in this cause, if an honest English merchant, I do not single out that state in disgrace, for this island ever held it honourable, but only for an instance of a private profession, if an English merchant should say, "Surely I would proceed no farther in the "union, were I as the king;" it might be reasonably answered, "No more would the king, were he "as an English merchant." And the like may be said of a gentleman of the country, be he never so worthy or sufficient; or of a lawyer, be he never so wise or learned; or of any other particular condition of men in this kingdom: for certainly, Mr. Speaker, if a man shall be only or chiefly sensible of those respects which his particular vocation and degree shall suggest and infuse into him, and not enter into true and worthy considerations of estate, he shall never be able aright to give counsel, or take counsel in this matter. So that if this request be granted, I account the cause obtained.

But to proceed to the matter itself: all consultations do rest upon questions comparative; for when a question is "de vero," it is simple, for there is but

one truth; but when a question is "de bono," it is for the most part comparative; for there be differing degrees of good and evil, and the best of the good is to be preferred and chosen, and the worst of the evil is to be declined and avoided; and therefore in a question of this nature you may not look for answer proper to every inconvenience alleged; for somewhat that cannot be especially answered may, nevertheless, be encountered and over weighed by matter of greater moment, and therefore the matter which I shall set forth unto you will naturally receive the distribution of three parts.

First an answer to those inconveniences which have been alleged to ensue, if we should give way to this naturalization; which, I suppose, you will not find to be so great as they have been made; but that much dross is put into the balance to help to make weight.

Secondly, an encounter against the remainder of these inconveniences which cannot properly be answered, by much greater inconveniences, which we shall incur if we do not proceed to this naturalization.

Thirdly, an encounter likewise, but of another nature, that is, by the gain and benefit which we shall draw and purchase to ourselves by proceeding to this naturalization. And yet, to avoid confusion, which evermore followeth upon too much generality, it is necessary for me, before I proceed to persuasion, to use some distribution of the points or parts of naturalization, which certainly can be no better, or none other, than the ancient distinction of "jus civitatis,

"jus suffragii vel tribus," and "jus petitionis sive "honorum:" for all ability and capacity is either of private interest of "meum et tuum," or of public service; and the public consisteth chiefly either in voice, or in action, or office. Now it is the first of these, Mr. Speaker, that I will only handle at this time and in this place, and refer the other two for a committee, because they receive more distinction and restriction.

To come therefore to the inconveniences alleged on the other part, the first of them is, that there may ensue of this naturalization a surcharge of people upon this realm of England, which is supposed already to have the full charge and content: and therefore there cannot be an admission of the adoptive without a diminution of the fortunes and conditions of those that are native subjects of this realm. A grave objection, Mr. Speaker, and very dutiful; for it proceeds not of any unkindness to the Scotish nation, but of a natural fastness to ourselves; for that answer of the virgins, "Ne forte non suffi- "ciat vobis et nobis," proceeded not out of any envy or malign humour, but out of providence, and the original charity which begins with ourselves. And I must confess, Mr. Speaker, that as the gentleman said, when Abraham and Lot, in regard of the greatness of their families, grew pent and straitened, it is true, that, brethren though they were, they grew to difference, and to those words, "Vade tu ad dexte- "ram, et ego ad sinistram," &c. But certainly, I should never have brought that example on that side; for we see what followed of it, how that this separation

" ad dexteram et ad sinistram" caused the miserable captivity of the one brother, and the dangerous, though prosperous war of the other, for his rescue and recovery.

But to this objection, Mr. Speaker, being so weighty and so principal, I mean to give three several answers, every one of them being, to my understanding, by itself sufficient.

The first is, that this opinion of the number of the Scotish nation, that should be likely to plant themselves here amongst us, will be found to be a thing rather in conceit than in event; for, Mr. Speaker, you shall find those plausible similitudes, of a tree that will thrive the better if it be removed into the more fruitful soil; and of sheep or cattle, that if they find a gap or passage open will leave the more barren pasture, and get into the more rich and plentiful, to be but arguments merely superficial, and to have no sound resemblance with the transplanting or transferring of families; for the tree, we know, by nature, as soon as it is set in the better ground, can fasten upon it, and take nutriment from it: and a sheep, as soon as he gets into the better pasture, what should let him to graze and feed? But there belongeth more, I take it, to a family or particular person, that shall remove from one nation to another: for if, Mr. Speaker, they have not stock, means, acquaintance, and custom, habitation, trades, countenance, and the like, I hope you doubt not but they will starve in the midst of the rich pasture, and are far enough off from grazing at their pleasure: and

therefore in this point, which is conjectural, experience is the best guide; for the time past is a pattern of the time to come. I think no man doubteth, Mr. Speaker, but his majesty's first coming in was as the greatest spring-tide for the confluence and entrance of that nation. Now I would fain understand, in these four years' space, and in the fulness and strength of the current and tide, how many families of Scotchmen are planted in the cities, boroughs, and towns of this kingdom; for I do assure myself, that, more than some persons of quality about his majesty's person here at court, and in London, and some other inferior persons, that have a dependence upon them, the return and certificate, if such a survey should be made, would be of a number extremely small: I report me to all your private knowledges of the places where you inhabit.

Now, Mr. Speaker, as I said, "Si in ligno viridi "ita fit, quid fiet in arido?" I am sure there will be no more such spring-tides. But you will tell me of a multitude of families of the Scotish nation in Polonia; and if they multiply in a country so far off, how much more here at hand? For that, Mr. Speaker, you must impute it of necessity to some special accident of time and place that draws them thither: for you see plainly before your eyes, that in Germany, which is much nearer, and in France, where they are invited with privileges, and with this very privilege of naturalization, yet no such number can be found: so as it cannot either be nearness of place, or privilege of person, that is the cause. But

shall I tell you, Mr. Speaker, what I think? Of all the places in the world, near or far off, they will never take that course of life in this kingdom, which they content themselves with in Poland; for we see it to be the nature of all men that they will rather discover poverty abroad, than at home. There is never a gentleman that hath overreached himself in expence, and thereby must abate his countenance, but he will rather travel, and do it abroad than at home: and we know well they have good high stomachs, and have ever stood in some terms of emulation with us: and therefore they will never live here, except they can live in good fashion. So as I assure you, Mr. Speaker, I am of opinion that the strife which we now have to admit them, will have like sequel as that contention had between the nobility and people of Rome for the admitting of a plebeian consul; which whilst it was in passage was very vehement, and mightily stood upon, and when the people had obtained it, they never made any plebeian consul, not in sixty years after: and so will this be for many years, as I am persuaded, rather a matter in opinion and reputation, than in use or effect. And this is the first answer that I give to this main inconvenience pretended, of surcharge of people.

The second answer which I give to this objection, is this: I must have leave to doubt, Mr. Speaker, that this realm of England is not yet peopled to the full; for certain it is, that the territories of France, Italy, Flanders, and some part of Germany, do in

equal space of ground bear and contain a far greater quantity of people, if they were mustered by the poll; neither can I see, that this kingdom is so much inferior unto those foreign parts in fruitfulness, as it is in population; which makes me conceive we have not our full charge. Besides, I do see manifestly amongst us the badges and tokens rather of scarceness, than of press of people, as drowned grounds, commons, wastes, and the like, which is a plain demonstration, that howsoever there may be an over-swelling throng and press of people here about London, which is most in our eye, yet the body of the kingdom is but thin sown with people; and whosoever shall compare the ruins and decays of ancient towns in this realm, with the erections and augmentations of new, cannot but judge that this realm hath been far better peopled in former times; it may be, in the heptarchy, or otherwise: for generally the rule holdeth, the smaller the state the greater the population, "pro rata." And whether this be true or no, we need not seek farther, than to call to our remembrance how many of us serve here in this place for desolate and decayed boroughs.

Again, Mr. Speaker, whosoever looketh into the principles of estate, must hold that it is the mediterrane countries, and not the maritime, which need to fear surcharge of people; for all sea provinces, and especially islands, have another element besides the earth and soil, for their sustentation. For what an infinite number of people are, and may be, sustained by fishing, carriage by sea, and merchandising?

Wherein again I do discover, that we are not at all pinched by the multitude of people; for if we were, it were not possible that we should relinquish and resign such an infinite benefit of fishing to the Flemings, as it is well known we do. And therefore I see, that we have wastes by sea, as well as by land; which still is an infallible argument that our industry is not awakened to seek maintenance by any overgreat press or charge of people. And lastly, Mr. Speaker, there was never any kingdom in the ages of the world had, I think, so fair and happy means to issue and discharge the multitude of their people, if it were too great, as this kingdom hath, in regard of that desolate and wasted kingdom of Ireland; which being a country blessed with almost all the dowries of nature, as rivers, havens, woods, quarries, good soil, and temperate climate, and now at last under his majesty blessed also with obedience, doth, as it were, continually call unto us for our colonies and plantations. And so I conclude my second answer to this pretended inconvenience, of surcharge of people.

The third answer, Mr. Speaker, which I give, is this: I demand what is the worst effect that can follow of surcharge of people? Look into all stories, and you shall find it none other than some honourable war for the enlargement of their borders, which find themselves pent, upon foreign parts; which inconvenience, in a valorous and warlike nation, I know not whether I should term an inconvenience or no; for the saying is most true, though in another

sense, "Omne solum forti patria." It was spoken indeed of the patience of an exiled man, but it is no less true of the valour of a warlike nation. And certainly, Mr. Speaker, I hope I may speak it without offence, that if we did hold ourselves worthy, whensoever just cause should be given, either to recover our ancient rights, or to revenge our late wrongs, or to attain the honour of our ancestors, or to enlarge the patrimony of our posterity, we would never in this manner forget considerations of amplitude and greatness, and fall at variance about profit and reckonings; fitter a great deal for private persons than for parliaments and kingdoms. And thus, Mr. Speaker, I have this first objection to such satisfaction as you have heard.

The second objection is, that the fundamental laws of both these kingdoms of England and Scotland are yet diverse and several; nay more, that it is declared by the instrument, that they shall so continue, and that there is no intent in his majesty to make innovation in them: and therefore that it should not be seasonable to proceed to this naturalization, whereby to endow them with our rights and privileges, except they should likewise receive and submit themselves to our laws; and this objection likewise, Mr. Speaker, I allow to be a weighty objection, and worthy to be well answered and discussed.

The answer which I shall offer is this: It is true, for my own part, Mr. Speaker, that I wish the Scotish nation governed by our laws; for I hold our

laws with some reducement worthy to govern, and it were the world: but this is that which I say, and I desire therein your attention, that, according to true reason of estate, naturalization is in order first and precedent to union of laws; in degree a less matter than union of laws; and in nature separable, not inseparable from union of laws; for naturalization doth but take out the marks of a foreigner, but union of laws makes them entirely as ourselves. Naturalization taketh away separation; but union of laws doth take away distinction. Do we not see, Mr. Speaker, that in the administration of the world under the great monarch God himself, that his laws are diverse; one law in spirits, another in bodies; one law in regions celestial, another in elementary; and yet the creatures are all one mass or lump, without any "vacuum" or separation? Do we not likewise see in the state of the Church, that amongst people of all languages and lineages there is one communion of saints, and that we are all fellow-citizens and naturalized of the heavenly Jerusalem; and yet nevertheless divers and several ecclesiastical laws, policies, and hierarchies, according to the speech of that worthy father, "In veste varietas sit, scissura non "sit?" And therefore certainly, Mr. Speaker, the bond of law is the more special and private bond, and the bond of naturalization the more common and general; for the laws are rather "figura reipub-"licæ" than "forma," and rather bonds of perfection than bonds of entireness: and therefore we see in the experience of our own government, that in the king-

dom of Ireland, all our statute laws, since Poyning's laws, are not in force; and yet we deny them not the benefit of naturalization. In Guernsey and Jersey and the Isle of Man, our common laws are not in force, and yet they have the benefit of naturalization; neither need any man doubt but that our laws and customs must in small time gather and win upon theirs; for here is the seat of the kingdom, whence come the supreme directions of estate: here is the king's person and example, of which the verse saith, "Regis ad exemplum totus componitur orbis." And therefore it is not possible, although not by solemn and formal act of estates, yet by the secret operation of no long time, but they will come under the yoke of our laws, and so "dulcis tractus pari "jugo." And this is the answer I give to the second objection.

The third objection is, some inequality in the fortunes of these two nations, England and Scotland, by the commixture whereof there may ensue advantage to them and loss to us. Wherein, Mr. Speaker, it is well that this difference or disparity consisteth but in the external goods of fortune: for indeed it must be confessed, that for the goods of the mind and the body, they are "alteri nos," other ourselves; for to do them but right, we know in their capacities and understandings they are a people ingenious, in labour industrious, in courage valiant, in body hard, active, and comely. More might be said, but in commending them we do but in effect commend ourselves: for they are of one

piece and continent with us; and the truth is, we are participant both of their virtues and vices. For if they have been noted to be a people not so tractable in government, we cannot, without flattering ourselves, free ourselves altogether from that fault, being a thing indeed incident to all martial people; as we see it evident by the example of the Romans and others; even like unto fierce horses, that though they be of better service than others, yet are they harder to guide and manage.

But for this objection, Mr. Speaker, I purpose to answer it, not by the authority of Scriptures, which saith, "Beatius est dare quam accipere," but by an authority framed and derived from the judgment of ourselves and our ancestors in the same case as to this point. For, Mr. Speaker, in all the line of our kings none useth to carry greater commendation than his majesty's noble progenitor king Edward the first of that name; and amongst his other commendations, both of war and policy, none is more celebrated than his purpose and enterprise for the conquest of Scotland, as not bending his designs to glorious acquests abroad, but to solid strength at home; which, nevertheless, if it had succeeded well, could not but have brought in all those inconveniences of the commixture of a more opulent kingdom with a less, that are now alleged. For it is not the yoke, either of our laws or arms, that can alter the nature of the climate or the nature of the soil; neither is it the manner of the commixture that can alter the matter of the commixture: and

therefore, Mr. Speaker, if it were good for us then, it is good for us now, and not to be prised the less because we paid not so dear for it. But a more full answer to this objection I refer over to that, which will come after, to be spoken touching surety and greatness.

The fourth objection, Mr. Speaker, is not properly an objection, but rather a pre-occupation of an objection of the other side; for it may be said, and very materially, Whereabout do we contend? The benefit of naturalization is by the law, in as many as have been or shall be born since his majesty's coming to the crown, already settled and invested. There is no more then but to bring the "ante-nati" into the degree of the "post-nati, that men grown that have well deserved, may be in no worse case than children which have not deserved, and elder brothers in no worse case than younger brothers; so as we stand upon "quiddam," not "quantum," being but a little difference of time of one generation from another. To this, Mr. Speaker, it is said by some, that the law is not so, but that the "post-nati" are aliens as well as the rest. A point that I mean not much to argue, both because it hath been well spoken to by the gentleman that spoke last before me; and because I do desire in this case and in this place to speak rather of conveniency than of law; only this I will say, that that opinion seems to me contrary to reason of law, contrary to form of pleading in law, and contrary to authority and experience of law. For reason of law, when I meditate of it, me-

thinks the wisdom of the common laws of England well observed, is admirable in the distribution of the benefit and protection of the laws, according to the several conditions of persons, in an excellent proportion. The degrees are four, but bipartite, two of aliens and two of subjects.

The first degree is of an alien born under a king or state, that is an enemy. If such an one come into this kingdom without safe-conduct, it is at his peril: the law giveth him no protection, neither for body, lands, nor goods; so as if he be slain there is no remedy by any appeal at the party's suit, although his wife were an English woman: marry at the king's suit, the case may be otherwise in regard of the offence to the peace.

The second degree is of an alien that is born under the faith and allegiance of a king or state that is a friend. Unto such a person the law doth impart a greater benefit and protection, that is, concerning things personal, transitory, and moveable, as goods and chattles, contracts, and the like, but not concerning freehold and inheritance. And the reason is, because he may be an enemy, though he be not; for the state under the obeisance of which he is, may enter into quarrel and hostility; and therefore as the law hath but a transitory assurance of him, so it rewards him but with transitory benefits.

The third degree is of a subject, who having been an alien, is made free by charter and denization. To such an one the law doth impart yet a more am-

ple benefit; for it gives him power to purchase freehold and inheritance to his own use, and likewise enables the children born after his denization to inherit. But yet nevertheless he cannot make title or convey pedigree from any ancestor paramount; for the law thinks not good to make him in the same degree with a subject born, because he was once an alien, and so might once have been an enemy: and "nemo subito fingitur," men's affections cannot be so settled by any benefit, as when from their nativity they are inbred and inherent.

And the fourth degree, which is the perfect degree, is of such a person as neither is enemy, nor could have been enemy in time past, nor can be enemy in time to come; and therefore the law gives unto him the full benefit of naturalization.

Now, Mr. Speaker, if these be the true steps and paces of the law, no man can deny but whosoever is born under the king's obedience, never could "in "aliquo puncto temporis" be an enemy, a rebel he might be, but no enemy, and therefore in reason of law is naturalized. Nay, contrariwise, he is bound "jure nativitatis" to defend this kingdom of England against all invaders or rebels; and therefore as he is obliged to the protection of arms, and that perpetually and universally, so he is to have the perpetual and universal benefit and protection of law, which is naturalization.

For form of pleading, it is true that hath been said, that if a man would plead another to be an alien, he must not only set forth negatively and pri-

vatively, that he was born out of the obedience of our sovereign lord the king, but affirmatively, under the obedience of a foreign king or state in particular, which can never be done in this case.

As for authority, I will not press it; you know all what hath been published by the king's proclamation. And for experience of law we see it in the subjects of Ireland, in the subjects of Guernsey and Jersey, parcels of the duchy of Normandy; in the subjects of Calais, when it was English, which was parcel of the crown of France. But, as I said, I am not willing to enter into an argument of law, but to hold myself to point of conveniency, so as for my part I hold all "post-nati" naturalized "ipso jure;" but yet I am far from opinion, that it should be a thing superfluous to have it done by parliament; chiefly in respect of that true principle of state, "Principum "actiones præcipue ad famam sunt componendæ." It will lift up a sign to all the world of our love towards them, and good agreement with them. And these are, Mr. Speaker, the material objections which have been made on the other side, whereunto you have heard my answers; weigh them in your wisdoms, and so I conclude that general part.

Now, Mr. Speaker, according as I promised, I must fill the other balance in expressing unto you the inconveniences which we shall incur, if we shall not proceed to this naturalization: wherein that inconvenience, which above all others, and alone by itself, if there were none other, doth exceedingly move me, and may move you, is a position of estate,

collected out of the records of time, which is this: that wheresoever several kingdoms or estates have been united in sovereignty, if that union hath not been fortified and bound in with a farther union, and namely, that which is now in question, of naturalization, this hath followed, that at one time or other they have broken again, being upon all occasions apt to revolt and relapse to the former separation.

Of this assertion the first example which I will set before you, is of that memorable union which was between the Romans and the Latins, which continued from the battle at the lake of Regilla, for many years, unto the consulships of C. Plautius and L. Æmilius Mamercus.* At what time there began, about this very point of naturalization, that war which was called "Bellum sociale," being the most bloody and pernicious war that ever the Roman state endured: wherein, after numbers of battles and infinite sieges and surprises of towns, the Romans in the end prevailed and mastered the Latins; but as soon as ever they had the honour of the war, looking back into what perdition and confusion they were near to have been brought, they presently naturalized them all. You speak of a naturalization in blood; there was a naturalization indeed in blood.

Let me set before you again the example of Sparta, and the rest of Peloponnesus their associates. The state of Sparta was a nice and jealous state in

* 169 years after that battle. There are extant at this day coins or medals, in memory of a battle fought by this C. Plautius at Privernum. Another copy hath *of T. Manlius and P. Decius.*

this point of imparting naturalization to their confederates. But what was the issue of it? After they had held them in a kind of society and amity for divers years, upon the first occasion given, which was no more than the surprisal of the castle of Thebes, by certain desperate conspirators in the habit of maskers, there ensued immediately a general revolt and defection of their associates; which was the ruin of their state, never afterwards to be recovered.

Of later times let me lead your consideration to behold the like events in the kingdom of Arragon; which kingdom was united with Castile and the rest of Spain in the persons of Ferdinando and Isabella, and so continued many years; but yet so as it stood a kingdom severed and divided from the rest of the body of Spain in privileges, and directly in this point of naturalization, or capacity of inheritance. What came of this? Thus much, that now of fresh memory, not past twelve years since, only upon the voice of a condemned man out of the grate of a prison towards the street, that cried "Fueros, Libertad, "Libertad," which is as much as, liberties or privileges, there was raised a dangerous rebellion, which was suppressed with great difficulty with an army royal. After which victory nevertheless, to shun farther inconvenience, their privileges were disannulled, and they were incorporated with Castile and the rest of Spain. Upon so small a spark, notwithstanding so long continuance, were they ready to break and sever again.

The like may be said of the states of Florence

and Pisa, which city of Pisa being united unto Florence, but not endowed with the benefit of naturalization, upon the first light of foreign assistance, by the expedition of Charles VIII. of France into Italy, did revolt; though it be since again re-united and incorporated.

The same effect we see in the most barbarous government, which shews it the rather to be an effect of nature; for it was thought a fit policy by the council of Constantinople, to retain the three provinces of Transylvania, Wallachia, and Moldavia, which were as the very nurses of Constantinople, in respect of their provisions, to the end they might be the less wasted, only under Waywoods as vassals and homagers, and not under Bashaws, as provinces of the Turkish empire: which policy we see by late experience proved unfortunate, as appeared by the revolt of the same three provinces, under the arms and conduct of Sigismond prince of Transylvania; a leader very famous for a time; which revolt is not yet fully recovered. Whereas we seldom or never hear of revolts of provinces incorporate to the Turkish empire.

On the other part, Mr. Speaker, because it is true what the logicians say, "Opposita juxta se "posita magis elucescunt:" let us take a view, and we shall find that wheresoever kingdoms and states have been united, and that union corroborate by the bond of mutual naturalization, you shall never observe them afterwards, upon any occasion of trouble or otherwise, to break and sever again: as we see

most evidently before our eyes, in divers provinces of France, that is to say, Guienne, Provence, Normandy, Britainy, which, notwithstanding the infinite infesting troubles of that kingdom, never offered to break again.

We see the like effect in all the kingdoms of Spain, which are mutually naturalized, as Leon, Castile, Valentia, Andalusia, Granada, Murcia, Toledo, Catalonia, and the rest, except Arragon, which held the contrary course, and therefore had the contrary success, as was said, and Portugal, of which there is not yet sufficient trial. And lastly, we see the like effect in our own nation, which never rent asunder after it was once united; so as we now scarce know whether the heptarchy were a true story or a fable. And therefore, Mr. Speaker, when I revolve with myself these examples and others, so lively expressing the necessity of a naturalization to avoid a relapse into a separation; and do hear so many arguments and scruples made on the other side; it makes me think on the old bishop, which, upon a public disputation of certain Christian divines with some learned men of the heathen, did extremely press to be heard; and they were loth to suffer him, because they knew he was unlearned, though otherwise an holy and well-meaning man: but at last, with much ado, he got to be heard; and when he came to speak, instead of using argument, he did only say over his belief: but did it with such assurance and constancy, as it did strike the minds of those that heard him more than any argument had

done. And so, Mr. Speaker, against all these witty and subtle arguments, I say, that I do believe, and I would be sorry to be found a prophet in it, that except we proceed with this naturalization, though perhaps not in his majesty's time, who hath such interest in both nations, yet in the time of his descendants these realms will be in continual danger to divide and break again. Now if any man be of that careless mind, "Maneat nostros ea cura nepotes;" or of that hard mind, to leave things to be tried by the sharpest sword: sure I am, he is not of St. Paul's opinion, who affirmeth, that whosoever useth not fore-sight and provision for his family, is worse than an unbeliever; much more, if we shall not use fore-sight for these two kingdoms, that comprehend in them so many families, but leave things open to the peril of future divisions. And thus have I expressed unto you the inconvenience, which, of all others, sinketh deepest with me as the most weighty: neither do there want other inconveniences, Mr. Speaker, the effects and influence whereof, I fear, will not be adjourned to so long a day as this that I have spoken of: for I leave it to your wisdom to consider whether you do not think, in case, by the denial of this naturalization, any pique, alienation, or unkindness, I do not say should be, but should be thought to be, or noised to be between these two nations, whether it will not quicken and excite all the envious and malicious humours, wheresoever, which are now covered, against us, either foreign or at home; and so open the way to practices and other

engines and machinations, to the disturbance of this state? As for that other inconvenience of his majesty's engagement to this action, it is too binding and too pressing to be spoken of, and may do better a great deal in your minds than in my mouth, or in the mouth of any man else; because, as I say, it doth press our liberty too far. And therefore, Mr. Speaker, I come now to the third general part of my division, concerning the benefits which we shall purchase by this knitting of the knot surer and straiter between these two kingdoms, by the communicating of naturalization: the benefits may appear to be two, the one surety, the other greatness.

Touching surety, Mr. Speaker, it was well said by Titus Quintius the Roman, touching the state of Peloponnesus, that the tortoise is safe within her shell, "Testudo intra tegumen tuta est;" but if there be any parts that lie open, they endanger all the rest. We know well, that although the state at this time be in a happy peace, yet for the time past, the more ancient enemy to this kingdom hath been the French, and the more late the Spaniard; and both these had as it were their several postern gates, whereby they might have approach and entrance to annoy us. France had Scotland, and Spain had Ireland; for these were the two accesses which did comfort and encourage both these enemies to assail and trouble us. We see that of Scotland is cut off by the union of these two kingdoms, if that it shall be now made constant and permanent; that of Ireland is cut off likewise by the convenient situation of

the west of Scotland towards the north of Ireland, where the sore was: which we see, being suddenly closed, hath continued closed by means of this salve; so that as now there are no parts of this state exposed to danger to be a temptation to the ambition of foreigners, but their approaches and avenues are taken away: for I do little doubt but those foreigners which had so little success when they had those advantages, will have much less comfort now that they be taken from them: and so much for surety.

For greatness, Mr. Speaker, I think a man may speak it soberly and without bravery, that this kingdom of England, having Scotland united, Ireland reduced, the sea provinces of the Low Countries contracted, and shipping maintained, is one of the greatest monarchies, in forces truly esteemed, that hath been in the world. For certainly the kingdoms here on earth have a resemblance with the kingdom of heaven, which our Saviour compareth, not to any great kernel or nut, but to a very small grain, yet such an one as is apt to grow and spread; and such do I take to be the constitution of this kingdom; if indeed we shall refer our counsels to greatness and power, and not quench them too much with the consideration of utility and wealth. For, Mr. Speaker, was it not, think you, a true answer that Solon of Greece made to the rich king Crœsus of Lydia, when he shewed unto him a great quantity of gold that he had gathered together, in ostentation of his greatness and might? But Solon said to him, contrary to his expectation, "Why, sir, if another come that

" hath better iron than you, he will be lord of all " your gold." Neither is the authority of Machiavel to be despised, who scorneth that proverb of state, taken first from a speech of Mucianus, That moneys are the sinews of war; and saith, " There are no " true sinews of war, but the very sinews of the arms " of valiant men."

Nay more, Mr. Speaker, whosoever shall look into the seminaries and beginnings of the monarchies of the world, he shall find them founded in poverty.

Persia, a country barren and poor, in respect of Media, which they subdued.

Macedon, a kingdom ignoble and mercenary until the time of Philip the son of Amyntas.

Rome had poor and pastoral beginnings.

The Turks, a band of Sarmatian Scythes, that in a vagabond manner made incursion upon that part of Asia, which is yet called Turcomania; out of which after much variety of fortune, sprung the Ottoman family, now the terror of the world.

So, we know, the Goths, Vandals, Alans, Huns, Lombards, Normans, and the rest of the northern people, in one age of the world made their descent or expedition upon the Roman empire, and came not, as rovers, to carry away prey, and be gone again; but planted themselves in a number of rich and fruitful provinces, where not only their generations, but their names, remain to this day; witness Lombardy, Catalonia, a name compounded of Goth and Alan, Andalusia, a name corrupted from Vandalitia, Hungaria, Normandy, and others.

Nay, the fortune of the Swisses of late years, which are bred in a barren and mountainous country, is not to be forgotten; who first ruined the Duke of Burgundy, the same who had almost ruined the kingdom of France, what time, after the battle near Granson, the rich jewel of Burgundy, prized at many thousands, was sold for a few pence by a common Swiss, that knew no more what a jewel meant than did Æsop's cock. And again, the same nation, in revenge of a scorn, was the ruin of the French king's affairs in Italy, Lewis XII. For that king, when he was pressed somewhat rudely by an agent of the Switzers to raise their pensions, brake into words of choler: "What," said he, "will these villains of the "mountains put a tax upon me?" Which words lost him his duchy of Milan, and chased him out of Italy.

All which examples, Mr. Speaker, do well prove Solon's opinion of the authority and mastery that iron hath over gold. And therefore, if I shall speak unto you mine own heart, methinks we should a little disdain that the nation of Spain, which howsoever of late it hath grown to rule, yet of ancient time served many ages; first under Carthage, then under Rome, after under Saracens, Goths, and others, should of late years take unto themselves that spirit as to dream of a monarchy in the west, according to that device, "Video solem orientem in "occidente," only because they have ravished from some wild and unarmed people mines and store of gold; and on the other side, that this island of Britain, seated and manned as it is, and that hath, I

make no question, the best iron in the world, that is, the best soldiers in the world, shall think of nothing but reckonings and audits, and "meum et tuum," and I cannot tell what.

Mr. Speaker, I have, I take it, gone through the parts which I propounded to myself, wherein if any man shall think that I have sung a "placebo," for mine own particular, I would have him know that I am not so unseen in the world, but that I discern it were much alike for my private fortune to rest a "tacebo," as to sing a "placebo" in this business: but I have spoken out of the fountain of my heart, "Credidi propter quod locutus sum:" I believed, therefore I spake. So as my duty is performed: the judgment is yours; God direct it for the best.

A SPEECH

USED BY

SIR FRANCIS BACON, KNIGHT,

IN THE LOWER HOUSE OF PARLIAMENT,

BY OCCASION OF A MOTION CONCERNING THE

UNION OF LAWS.

And it please you, Mr. Speaker, were it now a time to wish, as it is to advise, no man should be more forward or more earnest than myself in this wish, that his majesty's subjects of England and Scotland were governed by one law: and that for many reasons.

First, Because it will be an infallible assurance that there will never be any relapse in succeeding ages to a separation.

Secondly, "Dulcis tractus pari jugo." If the draught lie most upon us, and the yoke lie lightest on them, it is not equal.

Thirdly, The qualities, and, as I may term it, the elements of their laws and ours are such, as do promise an excellent temperature in the compounded body: for if the prerogative here be too indefinite, it may be the liberty there is too unbounded; if our laws and proceedings be too prolix and formal, it may be theirs are too informal and summary.

Fourthly, I do discern to my understanding, there

will be no great difficulty in this work; for their laws, by that I can learn, compared with ours, are like their language compared with ours: for as their language hath the same roots that ours hath, but hath a little more mixture of Latin and French; so their laws and customs have the like grounds that ours have, with a little more mixture of the civil law and French customs.

Lastly, The mean to this work seemeth to me no less excellent than the work itself: for if both laws shall be united, it is of necessity for preparation and inducement thereunto, that our own laws be reviewed and re-compiled; than the which I think there cannot be a work, that his majesty can undertake in these his times of peace, more politic, more honourable, nor more beneficial to his subjects for all ages:

> Pace data terris, animum ad civilia vertit
> Jura suum, legesque tulit justissimus auctor.

For this continual heaping up of laws without digesting them, maketh but a chaos and confusion, and turneth the laws many times to become but snares for the people, as is said in the Scripture, "Pluet "super eos laqueos." Now "Non sunt pejores "laquei, quam laquei legum." And therefore this work I esteem to be indeed a work, rightly to term it, heroical. So that for this good wish of union of laws I do consent to the full: And I think you may perceive by that which I have said, that I come not in this to the opinion of others, but that I was long ago settled in it myself: nevertheless, as this is moved

out of zeal, so I take it to be moved out of time, as commonly zealous motions are, while men are so fast carried on to the end, as they give no attention to the mean: for if it be time to talk of this now, it is either because the business now in hand cannot proceed without it, or because in time and order this matter should be precedent, or because we shall lose some advantage towards this effect so much desired, if we should go on in the course we are about. But none of these three in my judgment are true; and therefore the motion, as I said, unseasonable.

For first, That there may not be a naturalization without an union in laws, cannot be maintained. Look into the example of the Church and the union thereof. You shall see several Churches, that join in one faith, one baptism, which are the points of spiritual naturalization, do many times in policy, constitutions, and customs differ: and therefore one of the fathers made an excellent observation upon the two mysteries; the one, that in the gospel, where the garment of Christ is said to have been without seam; the other, that in the psalm, where the garment of the queen is said to have been of divers colours; and concludeth, "In veste varietas sit, "scissura non sit." So in this case, Mr. Speaker, we are now in hand to make this monarchy of one piece, and not of one colour. Look again into the examples of foreign countries, and take that next us of France, and there you shall find that they have this distribution, "pais du droit escrit," and "pais "du droit coustumier." For Gascoigne, Languedoc,

Provence, Dauphiny, are countries governed by the letter, or text of the civil law: but the Isle of France, Tourain, Berry, Anjou, and the rest, and most of all Britainy and Normandy are governed by customs, which amount to a municipal law, and use the civil law but only for grounds, and to decide new and rare cases; and yet nevertheless naturalization passeth through all.

Secondly, That this union of laws should precede the naturalization, or that it should go on "pari "passu," hand in hand, I suppose likewise, can hardly be maintained: but the contrary, that naturalization ought to precede, and that not in the precedence of an instant; but in distance of time: of which my opinion, as I could yield many reasons, so because all this is but a digression, and therefore ought to be short, I will hold myself now only to one, which is briefly and plainly this; that the union of laws will ask a great time to be perfected, both for the compiling and for the passing of them. During all which time, if this mark of strangers should be denied to be taken away, I fear it may induce such a habit of strangeness, as will rather be an impediment than a preparation to farther proceeding: for he was a wise man that said, "Opportuni magnis "conatibus transitus rerum," and in these cases, "non "progredi, est regredi." And like as in a pair of tables, you must put out the former writing before you can put in new; and again, that which you write in, you write letter by letter; but that which you put out, you put out at once: so we have now

to deal with the tables of men's hearts, wherein it is in vain to think you can enter the willing acceptance of our laws and customs, except you first put forth all notes either of hostility or foreign condition: and these are to be put out "simul et semel," at once without gradations; whereas the other points are to be imprinted and engraven distinctly and by degrees.

Thirdly, Whereas it is conceived by some, that the communication of our benefits and privileges is a good hold that we have over them to draw them to submit themselves to our laws, it is an argument of some probability, but yet to be answered many ways. For first, the intent is mistaken, which is not, as I conceive it, to draw them wholly to a subjection to our laws, but to draw both nations to one uniformity of law. Again, to think that there should be a kind of articulate and indented contract, that they should receive our laws to obtain our privileges, it is a matter in reason of estate not to be expected, being that which scarcely a private man will acknowledge, if it come to that whereof Seneca speaketh "Benefi-"cium accipere est libertatem vendere." No, but courses of estate do describe and delineate another way, which is, to win them either by benefit or by custom: for we see in all creatures that men do feed them first, and reclaim them after. And so in the first institution of kingdoms, kings did first win people by many benefits and protections, before they pressed any yoke. And for custom, which the poet calls "imponere morem;" who doubts but that the

seat of the kingdom, and the example of the king resting here with us, our manners will quickly be there, to make all things ready for our laws? And lastly, the naturalization, which is now propounded, is qualified with such restrictions as there will be enough kept back to be used at all times for an adamant of drawing them farther on to our desires. And therefore to conclude, I hold this motion of union of laws very worthy, and arising from very good minds; but yet not proper for this time.

To come therefore to that, which is now in question it is no more but whether there should be a difference made, in this privilege of naturalization, between the "ante-nati" and the "post-nati," not in point of law, for that will otherwise be decided, but only in point of convenience; as if a law were now to be made "de novo." In which question I will at this time only answer two objections, and use two arguments, and so leave it to your judgment.

The first objection hath been, that if a difference should be, it ought to be in favour of the "ante-nati," because they are persons of merit, service, and proof; whereas the "post-nati" are infants, that, as the Scripture saith, know not the right hand from the left.

This were good reason, Mr. Speaker, if the question were of naturalizing some particular persons by a private bill; but it hath no proportion with the general case; for now we are not to look to respects that are proper to some, but to those which are common to all. Now then how can it be imagined, but that those which took their first breath, since this

happy union, inherent in his majesty's person, must be more assured and affectionate to this kingdom, than those generally can be presumed to be, which were sometimes strangers? for "Nemo subito fingi-"tur:" the conversions of minds are not so swift as the conversions of times. Nay in effects of grace, which exceed far the effects of nature, we see St. Paul makes a difference between those he calls Neophytes, that is, newly grafted into Christianity, and those that are brought up in the faith. And so we see by the laws of the Church that the children of Christians shall be baptized in regard of the faith of their parents: but the child of an ethnic may not receive baptism till he be able to make an understanding profession of his faith.

Another objection hath been made, that we ought to be more provident and reserved to restrain the "post-nati" than the "ante-nati;" because during his majesty's time, being a prince of so approved wisdom and judgment, we need no better caution than the confidence we may repose in him; but in the future reigns of succeeding ages, our caution must be "in re" and not "in persona."

But, Mr. Speaker, to this I answer, that as we cannot expect a prince hereafter less like to err in respect of his judgment; so again, we cannot expect a prince so like to exceed, if I may so term it, in this point of beneficence to that nation, in respect of the occasion. For whereas all princes and all men are won either by merit or conversation, there is no appearance, that any of his majesty's descendants

can have either of these causes of bounty towards that nation in so ample degree as his majesty hath. And these be the two objections, which seemed to me most material, why the "post-nati" should be left free, and not to be concluded in the same restrictions with the "ante-nati; whereunto you have heard the answers.

The two reasons, which I will use on the other side, are briefly these: the one being a reason of common sense; the other, a reason of estate.

We see, Mr. Speaker, the time of the nativity is in most cases principally regarded. In nature, the time of planting and setting is chiefly observed; and we see the astrologers pretend to judge of the fortune of the party by the time of the nativity. In laws, we may not unfitly apply the case of legitimation to the case of naturalization; for it is true that the common canon law doth put the "ante-natus" and the "post-natus" in one degree. But when it was moved to the parliament of England, "Barones "una voce responderunt, Nolumus leges Angliæ "mutare." And though it must be confessed that the "ante-nati" and "post-nati" are in the same degree in dignities; yet were they never so in abilities: for no man doubts, but the son of an earl or baron, before his creation or call, shall inherit the dignity, as well as the son born after. But the son of an attainted person, born before the attainder, shall not inherit, as the after-born shall, notwithstanding charter of pardon.

The reason of estate is, that any restriction of the

" ante-nati" is temporary, and expireth with th generation; but if you make it in the " post-nat also, you do but in substance pen a perpetuity of s paration.

Mr. Speaker, in this point I have been short, b cause I little expected this doubt, as to point of co venience; and therefore will not much labour, whe I suppose there is no greater opposition.

A

PREPARATION

TOWARD

THE UNION OF THE LAWS

OF

ENGLAND AND SCOTLAND.

Your majesty's desire of proceeding towards the union of this whole island of Great Britain under one law, is, as far as I am capable to make any opinion of so great a cause, very agreeable to policy and justice. To policy, because it is one of the best assurances, as human events can be assured, that there will be never any relapse in any future ages to a separation. To justice, because "dulcis tractus pari jugo:" it is reasonable that communication of privilege draw on communication of discipline and rule. This work being of greatness and difficulty, needeth not to embrace any greater compass of designment, than is necessary to your majesty's main end and intention. I consider therefore, that it is a true and received division of law into "jus publicum" and "privatum," the one being the sinews of property, and the other of government; for that which concerneth private interest of "meum" and "tuum," in my simple opinion, it is not at this time to be meddled with; men love to

hold their own as they have held, and the difference of this law carrieth no mark of separation; for we see in any one kingdom, which is most at unity in itself, there is diversity of customs for the guiding of property and private rights: "in veste varietas sit, "scissura non sit." All the labour is to be spent in the other part; though perhaps not in all the other part; for, it may be, your majesty, in your high wisdom, will discern that even in that part there will not be requisite a conformity in all points. And although such conformity were to be wished, yet perchance it will be scarcely possible in many points to pass them for the present by assent of parliament. But because we that serve your majesty in the service of our skill and profession, cannot judge what your majesty, upon reason of state, will leave and take; therefore it is fit for us to give, as near as we can, a general information: wherein I, for my part, think good to hold myself to one of the parallels, I mean that of the English laws. For although I have read, and read with delight, the Scotish statutes, and some other collection of their laws; with delight I say, partly to see their brevity and propriety of speech, and partly to see them come so near to our laws; yet I am unwilling to put my sickle in another's harvest, but to leave it to the lawyers of the Scotish nation; the rather, because I imagine with myself that if a Scotish lawyer should undertake, by reading of the English statutes, or other our books of law, to set down positively in articles what the law of England were, he might oftentimes err: and the like errors, I

make account, I might incur in theirs. And therefore, as I take it, the right way is, that the lawyers of either nation do set down in brief articles what the law is of their nation, and then after, a book of two columns, either having the two laws placed respectively, to be offered to your majesty, that your majesty may by a ready view see the diversities, and so judge of the reduction, or leave it as it is.

"Jus publicum" I will divide, as I hold it fittest for the present purpose, into four parts. The first, concerning criminal causes, which with us are truly accounted "publici juris," because both the prejudice and the prosecution principally pertain to the crown and public estate. The second, concerning the causes of the church. The third, concerning magistrates, officers, and courts: wherein falleth the consideration of your majesty's regal prerogative, whereof the rest are but streams. And the fourth, concerning certain special and politic laws, usages, and constitutions, that do import the public peace, strength, and wealth of the kingdom. In which part I do comprehend not only constant ordinances of law, but likewise forms of administration of law, such as are the commissions of the peace, the visitations of the provinces by the judges of the circuits, and the like. For these in my opinion, for the purpose now in hand, deserve a special observation, because they being matters of that temporary nature, as they may be altered, as I suppose, in either kingdom, without parliament, as to your majesty's wisdom may seem best; it may be the most profitable and

ready part of this labour will consist in the introducing of some uniformity in them.

To begin therefore with capital crimes, and first that of treason.

CASES OF TREASON.

Where a man doth compass or imagine the death of the king, if it appear by any overt act, it is treason.

Where a man doth compass or imagine the death of the king's wife, if it appear by any overt act, it is treason.

Where a man doth compass or imagine the death of the king's eldest son and heir, if it appear by any overt act, it is treason.

Where a man doth violate the king's wife, it is treason.

Where a man doth violate the king's eldest daughter unmarried, it is treason.

Where a man doth violate the wife of the king's eldest son and heir, it is treason.

Where a man doth levy war against the king and his realm, it is treason.

Where a man is adherent to the king's enemies, giving them aid and comfort, it is treason.

Where a man counterfeiteth the king's great seal, it is treason.

Where a man counterfeiteth the king's privy seal, it is treason.

Where a man counterfeiteth the king's privy signet, it is treason.

Where a man doth counterfeit the king's sign manual, it is treason.

Where a man counterfeits the king's money, it is treason.

Where a man bringeth into the realm false money, counterfeited to the likeness of the coin of England with intent to merchandise or make payment therewith, and knowing it to be false, it is treason.

Where a man counterfeiteth any foreign coin current in payment within this realm, it is treason.

Where a man doth bring in foreign money, being current within the realm, the same being false and counterfeit, with intent to utter it, and knowing the same to be false, it is treason.

Where a man doth clip, wash, round, or file any of the king's money, or any foreign coin current by proclamation, for gain's sake, it is treason.

Where a man doth any ways impair, diminish, falsify, scale, or lighten the king's money, or any foreign moneys current by proclamation, it is treason.

Where a man killeth the chancellor, being in his place and doing his office, it is treason.

Where a man killeth the treasurer, being in his place and doing his office, it is treason.

Where a man killeth the king's justice in eyre, being in his place and doing his office, it is treason.

Where a man killeth the king's justice of assize, being in his place and doing his office, it is treason.

Where a man killeth the king's justice of Oyer and Terminer, being in his place and doing his office, it is treason.

Where a man doth persuade or withdraw any of the king's subjects from his obedience, or from the religion by his majesty established, with intent to withdraw him from the king's obedience, it is treason.

Where a man is absolved, reconciled, or withdrawn from his obedience to the king, or promiseth his obedience to any foreign power, it is treason.

Where any Jesuit, or other priest ordained since the first year of the reign of queen Elizabeth, shall come into, or remain in any part of this realm, it is treason.

Where any person being brought up in a college of Jesuits, or seminary, shall not return within six months after proclamation made, and within two days after his return submit himself to take the oath of supremacy, if otherwise he do return, or be within the realm, it is treason.

Where a man doth affirm or maintain any authority of jurisdiction spiritual, or doth put in use or execute any thing for the advancement or setting forth thereof, such offence, the third time committed, is treason.

Where a man refuseth to take the oath of supremacy, being tendered by the bishop of the diocese, if he be an ecclesiastical person; or by commission out of the chancery, if he be a temporal person; such offence the second time is treason.

Where a man committed for treason doth voluntarily break prison, it is treason.

Where a jailor doth voluntarily permit a man commited for treason to escape, it is treason.

Where a man procureth or consenteth to a treason, it is treason.

Where a man relieveth or comforteth a traitor, knowing it, it is treason.

The punishment, trial, and proceedings in cases of treason.

In treason, the corporal punishment is by drawing on a hurdle from the place of the prison to the place of execution, and by hanging and being cut down alive, bowelling, and quartering: and in women by burning.

In treason, there ensueth a corruption of blood in the line ascending and descending.

In treason, lands and goods are forfeited, and inheritances, as well intailed as fee-simple, and the profits of estates for life.

In treason, the escheats go to the king, and not to the lord of the fee.

In treason, the lands forfeited shall be in the king's actual possession without office.

In treason there be no accessaries, but all are principals.

In treason, no benefit of clergy, or sanctuary, or peremptory challenge.

In treason, if the party stand mute, yet nevertheless judgment and attainder shall proceed all one as upon verdict.

In treason, bail is not permitted.

In treason, no counsel is to be allowed to the party.

In treason, no witness shall be received upon oath for the party's justification.

In treason, if the fact be committed beyond the seas, yet it may be tried in any county where the king will award his commission.

In treason, if the party be "non sanæ memoriæ," yet if he had formerly confessed it before the king's council, and that it be certified that he was of good memory at the time of his examination and confession, the court may proceed to judgment without calling or arraigning the party.

In treason the death of the party before conviction dischargeth all proceedings and forfeitures.

In treason, if the party be once acquitted, he shall not be brought in question again for the same fact.

In treason, no new case not expressed in the statute of 25 Ed. III. nor made treason by any special statute since, ought to be judged treason, without consulting with the parliament.

In treason, there can be no prosecution but at the king's suit, and the king's pardon dischargeth.

In treason, the king cannot grant over to any subject power and authority to pardon it.

In treason, a trial of a peer of the kingdom is to be by special commission before the lord high steward, and those that pass upon him to be none but peers; and the proceeding is with great solemnity, the lord steward sitting under a cloth of estate with a white rod of justice in his hand:

and the peers may confer together, but are not any ways shut up: and are demanded by the lord steward their voices one by one, and the plurality of voices carrieth it. In treason, it hath been an ancient use and favour from the kings of this realm to pardon the execution of hanging, drawing, and quartering; and to make warrant for their beheading.

The proceeding in case of treason with a common subject is in the king's bench, or by commission of Oyer and Terminer.

MISPRISION OF TREASON.

Cases of misprision of treason.

Where a man concealeth high treason only, without any comforting or abetting, it is misprision of treason.

Where a man counterfeiteth any foreign coin of gold or silver not current in the realm, it is misprision of treason.

The punishment, trial, and proceeding in cases of misprision of treason.

The punishment of misprision of treason is by perpetual imprisonment, loss of the issues of their lands during life, and loss of goods and chattels.

The proceeding and trial is, as in cases of treason.

In misprision of treason bail is not admitted.

PETIT TREASON.

Cases of petit treason.

Where the servant killeth the master, it is petit treason.

Where the wife killeth her husband, it is petit treason.

Where a spiritual man killeth his prelate, to whom he is subordinate, and oweth faith and obedience, it is petit treason.

Where the son killeth the father or mother, it hath been questioned whether it be petit treason, and the late experience and opinion seemeth to weigh to the contrary, though against law and reason in my judgment.

The punishment, trial, and proceeding in cases of petit treason.

In petit treason, the corporal punishment is by drawing on a hurdle, and hanging, and in a woman, burning.

In petit treason, the forfeiture is the same with the case of felony.

In petit treason, all accessaries are but in case of felony.

FELONY.

Cases of felony.

Where a man committeth murder, that is, homicide of prepensed malice, it is felony.

Where a man committeth manslaughter, that is,

homicide of sudden heat, and not of malice prepensed, it is felony.

Where a man committeth burglary, that is breaking of an house with an intent to commit felony, it is felony.

Where a man rideth armed, with a felonious intent, it is felony.

Where a man doth maliciously and feloniously burn a house, it is felony.

Where a man doth maliciously and feloniously burn corn upon the ground, or in stacks, it is felony.

Where a man doth maliciously cut out another's tongue, or put out his eyes, it is felony.

Where a man robbeth or stealeth, that is, taketh away another man's goods, above the value of twelvepence, out of his possession, with an intent to conceal it, it is felony.

Where a man embezzeleth or withdraweth any of the king's records at Westminster, whereby any judgment is reversed, it is felony.

Where a man that hath custody of the king's armour, munition, or other habiliments of war, doth maliciously convey away the same, to the value of twenty shillings, it is felony.

Where a servant hath goods of his master's delivered unto him, and goeth away with them, it is felony.

Where a man conjures, or invocates wicked spirits, it is felony.

Where a man doth use or practise any manner of

witchcraft, whereby any person shall be killed, wasted, or lamed in his body, it is felony.

Where a man practiseth any witchcraft, to discover treasure hid, or to discover stolen goods, or to provoke unlawful love, or to impair or hurt any man's cattle or goods, the second time, having been once before convicted of like offence, it is felony.

Where a man useth the craft of multiplication of gold or silver, it is felony.

Where a man committeth rape, it is felony.

Where a man taketh away a woman against her will, not claiming her as his ward or bondwoman, it is felony.

Where any person marrieth again, her or his former husband or wife being alive, it is felony.

Where a man committeth buggery with man or beast, it is felony.

Where any persons, above the number of twelve, shall assemble themselves with intent to put down enclosures, or bring down the prices of victuals, &c. and do not depart after proclamation, it is felony.

Where man shall use any words to encourage or draw any people together, "ut supra," and they do assemble accordingly, and do not depart after proclamation, it is felony.

Where a man being the king's sworn servant, conspireth to murder any lord of the realm or any of the privy council, it is felony.

Where a soldier hath taken any parcel of the king's wages, and departeth without licence, it is felony.

Where a man receiveth a seminary priest, knowing him to be such a priest, it is felony.

Where a recusant, which is a seducer, and persuader, and inciter of the king's subjects against the king's authority in ecclesiastical causes, or a persuader of conventicles, &c. shall refuse to abjure the realm, it is felony.

Where vagabonds be found in the realm, calling themselves Egyptians, it is felony.

Where a purveyor taketh without warrant, or otherwise doth offend against certain special laws, it is felony.

Where a man hunteth in any forest, park, or warren, by night or by day, with vizards or other disguisements and is examined thereof and concealeth his fact, it is felony.

Where a man stealeth certain kinds of hawks, it is felony.

Where a man committeth forgery the second time, having been once before convicted, it is felony.

Where a man transporteth rams or other sheep out of the king's dominions, the second time, it is felony.

Where a man being imprisoned for felony, breaks prison, it is felony.

Where a man procureth or consenteth to a felony to be committed, it is felony, as to make him accessary before the fact.

Where a man receiveth or relieveth a felon,

knowing thereof, it is felony, as to make him accessary after the fact.

Where a woman, by the constraint of her husband, in his presence, joineth with him in committing of felony, it is not felony, neither as principal nor as accessary.

The punishment, trial, and proceeding in cases of felony.

In felony, the corporal punishment is by hanging, and it is doubtful whether the king may turn it into beheading in the case of a peer or other person of dignity, because in treason the striking off the head is part of the judgment, and so the king pardoneth the rest: but in felony it is no part of the judgment, and the king cannot alter the execution of law; yet precedents have been both ways.

In felony, there followeth corruption of blood, except it be in cases made felony by special statutes, with a proviso that there shall be no corruption of blood.

In felony, lands in fee-simple and goods are forfeited, but not lands intailed, and the profits of estates for life are likewise forfeited: And by some customs lands in fee-simple are not forfeited;

The father to the bough, son to the plough;

as in Gavelkind in Kent, and other places.

In felony, the escheats go to the lord of the fee, and not to the king, except he be lord: But the profits of estates for lives, or in tail during the life of

tenant in tail, go to the king; and the king hath likewise, in fee-simple lands holden of common lords, "annum, diem, et vastum."

In felony, the lands are not in the king before office, nor in the lord before entry or recovery in writ of escheat, or death of the party attainted.

In felony, there can be no proceeding with the accessary before there be a proceeding with the principal; which principal if he die, or plead his pardon, or have his clergy before attainder, the accessaries can never be dealt with.

In felony, if the party stand mute, and will not put himself upon his trial, or challenge peremptorily above the number that the law allows, he shall have judgment not of hanging, but of penance of pressing to death; but then he saves his lands, and forfeits only his goods.

In felony, at the common law, the benefit of clergy or sanctuary was allowed; but now by statutes it is taken away in most cases.

In felony, bail may be admitted where the fact is not notorious, and the person not of evil fame.

In felony, no counsel is to be allowed to the party, no more than in treason.

In felony, no witness shall be received upon oath for the party's justification, no more than in treason.

In felony, if the fact be committed beyond the seas, or upon the seas, "super altum mare," there is no trial at all in the one case, nor by course of jury in the other case, but by the jurisdiction of the Admiralty.

In felony, if the party be "non sanæ memoriæ," although it be after the fact, he cannot be tried nor adjudged, except it be in course of outlawry, and that is also erroneous.

In felony, the death of the party before conviction dischargeth all proceedings and forfeitures.

In felony, if the party be once acquitted, or in peril of judgment of life lawfully, he shall never be brought in question again for the same fact.

In felony, the prosecution may be either at the king's suit by way of indictment, or at the party's suit by way of appeal; and if it be by way of appeal, the defendant shall have his counsel, and produce witnesses upon oath, as in civil causes.

In felony, the king may grant hault justice to a subject, with the regality of power to pardon it.

In felony, the trial of peers is all one as in case of treason.

In felony, the proceedings are in the king's bench, or before commissioners of Oyer and Terminer, or of gaol delivery, and in some cases before justices of peace.

Cases of Felonia de se, *with the punishment, trial, and proceeding therein.*

In the civil law, and other laws, they make a difference of cases of "felonia de se:" for where a man is called in question upon any capital crime, and killeth himself to prevent the law, they give the same judgment in all points of forfeiture, as if they had been attainted in their life-time: And on the other

side, where a man killeth himself upon impatience of sickness or the like, they do not punish it at all: but the law of England taketh it all in one degree, and punisheth it only with loss of goods to be forfeited to the king, who generally granteth them to his almoner, where they be not formerly granted unto special liberties.

OFFENCES OF PRÆMUNIRE.

Cases of Præmunire.

Where a man purchaseth or accepteth any provision, that is, collation of any spiritual benefice or living, from the see of Rome, it is case of præmunire.

Where a man will purchase any process to draw any people of the king's allegiance out of the realm, in plea, whereof the cognizance pertains to the king's court and cometh not in person to answer his contempt in that behalf before the king and his council, or in his chancery, it is case of præmunire.

Where a man doth sue in any court which is not the king's court, to defeat or impeach any judgment given in the king's court, and doth not appear to answer his contempt, it is case of præmunire.

Where a man doth purchase or pursue in the court of Rome, or elsewhere, any process, sentence of excommunication, bull, instrument, or other thing which touches the king in his regality, or his realm in prejudice, it is case of præmunire.

Where a man doth affirm or maintain any foreign authority of jurisdiction spiritual, or doth

put in use or execute any thing for the advancement or setting forth thereof; such offence, the second time committed, is case of præmunire.

Where a man refuseth to take the oath of supremacy, being tendered by the bishop of the diocese, if he be an ecclesiastical person; or by commission out of the chancery, if he be a temporal person, it is case of præmunire.

Where the dean and chapter of any church, upon the "Congé d'elire" of an archbishop or bishop, doth refuse to elect any such archbishop or bishop as is nominated unto them in the king's letter missive, it is case of præmunire.

Where a man doth contribute or give relief unto any Jesuit or seminary priest, or to any college of Jesuits or seminary priests, or to any person brought up therein, and called home, and not returning, it is case of præmunire.

Where a man is broker of an usurious contract above ten in the hundred, it is case of præmunire.

The punishment, trial, and proceedings in cases of præmunire.

The punishment is by imprisonment during life, forfeiture of goods, forfeiture of lands in fee-simple, and forfeiture of the profits of lands intailed, or for life.

The trial and proceeding is as in cases of misprison of treason; and the trial is by peers, where a peer of the realm is the offender.

OFFENCES OF ABJURATION AND EXILE.

Cases of abjuration and exile, and the proceedings therein.

Where a man committeth any felony, for the which at this day he may have privilege of sanctuary, and taketh sanctuary, and confesseth the felony before the coroner, he shall abjure the liberty of the realm, and choose his sanctuary; and if he commit any new offence, or leave his sanctuary, he shall lose the privilege thereof, and suffer as if he had not taken sanctuary.

Where a man not coming to the church, and, being a popish recusant, doth persuade any of the king's subjects to impugn his majesty's authority in causes ecclesiastical, or shall persuade any subject from coming to church, or receiving the communion, or persuade any subject to come to any unlawful conventicles, or shall be present at any such unlawful conventicles, and shall not after conform himself within a time, and make his submission, he shall abjure the realm, and forfeit his goods and lands during life; and if he depart not within the time prefixed, or return, he shall be in the degree of a felon.

Where a man being a popish recusant, and not having lands to the value of twenty marks per annum, nor goods to the value of 40*l.* shall not repair to his dwelling or place where he was born, and there confine himself within the compass of five miles, he shall abjure the realm; and if he return, he shall be in the degree of a felon.

Where a man kills the king's deer in chases or forests, and can find no sureties after a year's imprisonment, he shall abjure the realm.

Where a man is a trespasser in parks, or in ponds of fish, and after three years' imprisonment cannot find sureties, he shall abjure the realm.

Where a man is a ravisher of any child within age, whose marriage belongs to any person, and marrieth the said child after years of consent, and is not able to satisfy for the marriage, he shall abjure the realm.

OFFENCE OF HERESY.

Cases of heresy, and the trial and proceeding therein.

The declaration of heresy, and likewise the proceeding and judgment upon heretics, is by the common laws of this realm referred to the jurisdiction ecclesiastical, and the secular arm is reached unto them by the common laws, and not by any statute for the execution of them by the king's writ "de hæretico "comburendo."

CASES OF THE KING'S PREROGATIVE.

The king's prerogative in Parliament.

1. The king hath an absolute negative voice to all bills that pass the parliament, so as without his royal assent they have a mere nullity, and not so much as "authoritas præscripta," as "senatus "consulta" had, notwithstanding the intercession of tribunes.

2. The king may summon parliaments, dissolve them, adjourn and prorogue them at his pleasure.

3. The king may add voices in parliament at his pleasure, for he may give privileges to borough towns, and call and create barons at his pleasure.

4. No man can sit in parliament unless he take the oath of allegiance.

The king's prerogative in war and peace.

1. The king hath power to declare and proclaim war, and make and conclude peace.

2. The king hath power to make leagues and confederacies with foreign estates, more or less strait, and to revoke and disannul them at his pleasure.

3. The king hath power to command the bodies of his subjects for service of his wars, and to muster, train, and levy men, and to transport them by sea or land at his pleasure.

4. The king hath power in time of war to execute martial law, and to appoint all officers of war at his pleasure.

5. The king hath power to grant his letters of mart and reprisal for remedy to his subjects upon foreign wrongs.

6. The king may give knighthood, and thereby enable any subject to perform knight's service.

The king's prerogative in matter of money.

1. The king may alter his standard in baseness or fineness.

2. The king may alter his stamp in the form of it.

3. The king may at his pleasure alter the valuations, and raise and fall moneys.

4. The king may by proclamation make money of his own current or not.

5. The king may take or refuse the subjects' bullion, or coin for more or less money.

6. The king by proclamation may make foreign money current, or not.

The king's prerogative in matters of trade and traffic.

1. The king may constrain the person of any of his subjects not to go out of the realm.

2. The king may restrain any of his subjects to go out of the realm in any special part foreign.

3. The king may forbid the exportation of any commodities out of the realm.

4. The king may forbid the importation of any commodities into this realm.

5. The king may set a reasonable impost upon any foreign wares that come into the realm, and so of native wares that go out of the realm.

The king's prerogative in the persons of his subjects.

1. The king may create any corporation or body politic, and enable them to purchase, to grant, to sue, and be sued; and with such restrictions and limitations as he pleases.

2. The king may denizen and enable any foreigner for him and his descendants after the charter; though he cannot naturalize, nor enable him to make pedigree from ancestors paramount.

3. The king may enable any attainted person, by his charter of pardon, and purge the blood for time

to come, though he cannot restore the blood for the time past.

4. The king may enable any dead persons in the law, as men professed in religion, to take and purchase to the king's benefit.

A twofold power of the law.

1. A Direction: In this respect the king is underneath the law; because his acts are guided thereby.

2. Correction: In this respect the king is above the law; for it may not correct him for any offence.

A twofold power in the king.

1. His absolute power, whereby he may levy forces against any nation.

2. His limited power, which is declared and expressed in the laws what he may do.

THE

ARGUMENT

OF

SIR FRANCIS BACON, KNIGHT,

His Majesty's Solicitor-General,

IN THE CASE OF

THE POST-NATI OF SCOTLAND,

IN THE EXCHEQUER CHAMBER,

Before the Lord Chancellor, and all the Judges of England.

May it please your Lordships,

THIS case your lordships do well perceive to be of exceeding great consequence. For whether you do measure that by place, that reacheth not only to the realm of England, but to the whole island of Great Britain; or whether you measure that by time, that extendeth not only to the present time, but much more to future generations,

Et nati natorum, et qui nascentur ab illis:

And therefore as that is to receive at the bar a full and free debate, so I doubt not but that shall receive from your lordships a sound and just resolution according to law, and according to truth. For, my lords, though he were thought to have said well, that said that for his word, "Rex fortissimus;" yet he was thought to have said better, even in the opinion of the king himself, that said, "Veritas fortissima, et

" prævalet :" And I do much rejoice to observe such a concurrence in the whole carriage of this cause to this end, that truth may prevail.

The case no feigned or framed case; but a true case between true parties.

The title handled formerly in some of the king's courts, and freehold upon it; used indeed by his majesty in his high wisdom to give an end to this great question, but not raised; " occasio" as the schoolmen say, " arrepta, non porrecta."

The case argued in the king's bench by Mr. Walter with great liberty, and yet with good approbation of the court; the persons assigned to be of counsel on that side, inferior to none of their quality and degree in learning; and some of them most conversant and exercised in the question.

The judges in the king's bench have adjourned it to this place for conference with the rest of their brethren. Your lordship, my lord chancellor, though you be absolute judge in the court where you sit, and might have called to you such assistance of judges as to you had seemed good; yet would not forerun or lead in this case by any opinion there to be given; but have chosen rather to come yourself to this assembly; all tending, as I said, to this end, whereunto I for my part do heartily subscribe, " ut vincat " veritas," that truth may first appear, and then prevail. And I do firmly hold, and doubt not but I shall well maintain, that this is the truth, that Calvin the plaintiff is " ipso jure" by the law of England a natural born subject, to purchase freehold, and to

bring real actions within England. In this case I must so consider the time, as I must much more consider the matter. And therefore though it may draw my speech into farther length; yet I dare not handle a case of this nature confusedly, but purpose to observe the ancient and exact form of pleadings; which is,

First, to explain or induce.

Then, to confute, or answer objections.

And lastly, to prove, or confirm.

And first for explanation. The outward question in this case is no more, but, Whether a child, born in Scotland since his majesty's happy coming to the crown of England, be naturalized in England, or no? But the inward question or state of the question evermore beginneth where that which is confessed on both sides doth leave.

It is confessed, that if these two realms of England and Scotland were united under one law and one parliament, and thereby incorporated and made as one kingdom, that the "Post-natus" of such an union should be naturalized.

It is confessed, that both realms are united in the person of our sovereign; or, because I will gain nothing by surreption, in the putting of the question, that one and the same natural person is king of both realms.

It is confessed, that the laws and parliaments are several. So then, Whether this privilege and benefit of naturalization be an accessory or dependency upon that which is one and joint, or upon that which

is several, hath been, and must be the depth of this question. And therefore your lordships do see the state of this question doth evidently lead me by way of inducement to speak of three things: The king, the law, and the privilege of naturalization. For if you well understand the nature of the two principals, and again the nature of the accessory; then shall you discern, to whether principal the accessory doth properly refer, as a shadow to a body, or iron to an adamant.

And therefore your lordships will give me leave in a case of this quality, first to visit and open the foundations and fountains of reason, and not begin with the positions and eruditions of a municipal law; for so was that done in the great case of mines; and so ought that to be done in all cases of like nature. And this doth not at all detract from the sufficiency of our laws, as incompotent to decide their own cases, but rather addeth a dignity unto them, when their reason appearing as well as their authority doth shew them to be as fine monies, which are current not only by the stamp, because they are so received, but by the natural metal, that is, the reason and wisdom of them.

And master Littleton himself in his whole book doth commend but two things to the professors of the law by the name of his sons; the one, the inquiring and searching out the reasons of the law; and the other, the observing of the forms of pleadings. And never was there any case that came in judgment that required more, that Littleton's advice should be fol-

lowed in those two points, than doth the present case in question. And first of the king.

It is evident that all other commonwealths, monarchies only excepted, do subsist by a law precedent. For where authority is divided amongst many officers, and they not perpetual, but annual or temporary, and not to receive their authority but by election, and certain persons to have voice only to that election, and the like; these are busy and curious frames, which of necessity do pre-suppose a law precedent, written or unwritten, to guide and direct them: but in monarchies, especially hereditary, that is, when several families, or lineages of people do submit themselves to one line, imperial or royal, the submission is more natural and simple, which afterwards by laws subsequent is perfected and made more formal; but that is grounded upon nature. That this is so, it appeareth notably in two things; the one the platforms and patterns which are found in nature of monarchies; the original submissions, and their motives and occasions. The platforms are three:

The first is that of a father, or chief of a family; who governing over his wife by prerogative of sex, over his children by prerogative of age, and because he is author unto them of being, and over his servants by prerogative of virtue and providence (for he that is able of body, and improvident of mind, is "natura servus") that is the very model of a king. So is the opinion of Aristotle, lib. iii. Pol. cap. 14. where he saith, "Verum autem regnum est, cum

"penes unum est rerum summa potestas: quod "regnum procurationem familiæ imitatur."

And therefore Lycurgus, when one counselled him to dissolve the kingdom, and to establish another form of estate, answered, "Sir, begin to do that "which you advise first at home in your own house:" noting, that the chief of a family is as a king; and that those that can least endure kings abroad, can be content to be kings at home. And this is the first platform, which we see is merely natural.

The second is that of a shepherd and his flock, which, Xenophon saith, Cyrus had ever in his mouth. For shepherds are not owners of the sheep; but their office is to feed and govern: no more are kings proprietaries or owners of the people: for God is sole owner of people. "The nations," as the Scripture saith, "are his inheritance:" but the office of kings is to govern, maintain, and protect people. And that is not without a mystery, that the first king that was instituted by God, David, for Saul was but an untimely fruit, was translated from a shepherd, as you have it in Psalm lxxviii. "Et "elegit David servum suum, de gregibus ovium sus-"tulit eum,—pascere Jacob servum suum, et Israel "hæreditatem suam." This is the second platform; a work likewise of nature.

The third platform is the government of God himself over the world, whereof lawful monarchies are a shadow. And therefore both amongst the Heathen, and amongst the Christians, the word, sacred, hath been attributed unto kings, because

of the conformity of a monarchy with a divine Majesty: never to a senate or people. And so you find it twice in the lord Coke's Reports; once in the second book, the bishop of Winchester's case; and in his fifth book, Cawdrie's case; and more anciently in the 10 of H. VII. fol. 10. "Rex est persona "mixta cum sacerdote;" an attribute which the senate of Venice, or a canton of Swisses, can never challenge. So, we see, there be precedents or platforms of monarchies, both in nature, and above nature; even from the monarch of heaven and earth to the king, if you will, in an hive of bees. And therefore other states are the creatures of law: and this state only subsisteth by nature.

For the original submissions they are four in number: I will briefly touch them: The first is paternity or patriarchy, which was when a family growing so great as it could not contain itself within one habitation, some branches of the descendants were forced to plant themselves into new families, which second families could not by a natural instinct and inclination but bear a reverence, and yield an obeisance to the eldest line of the ancient family from which they were derived.

The second is, the admiration of virtue, or gratitude towards merit, which is likewise naturally infused into all men. Of this Aristotle putteth the case well, when it was the fortune of some one man, either to invent some arts of excellent use towards man's life, or to congregate people, that dwelt scattered, into one place, where they might cohabit with

more comfort, or to guide them from a more barren land to a more fruitful, or the like: upon these deserts, and the admiration and recompense of them, people submitted themselves.

The third, which was the most usual of all, was conduct in war, which even in nature induceth as great an obligation as paternity. For as men owe their life and being to their parents in regard of generation, so they owe that also to saviours in the wars in regard of preservation. And therefore we find in chap. xviii. of the book of Judges, ver. 22. "Dixerunt omnes viri ad Gideon, Dominare nostri, "tu et filii tui, quoniam servasti nos de manu Ma-"dian." And so we read when it was brought to the ears of Saul, that the people sung in the streets, "Saul hath killed his thousands, and David his ten "thousand of enemies," he said straightways: "Quid "ei superest nisi ipsum regnum?" For whosoever hath the military dependence, wants little of being king.

The fourth is an inforced submission, which is conquest, whereof it seemed Nimrod was the first precedent, of whom it is said; "Ipse cœpit potens "esse in terra, et erat robustus venator coram Domi-"no." And this likewise is upon the same root which is the saving or gift as it were of life and being; for the conqueror hath power of life and death over his captives; and therefore where he giveth them themselves, he may reserve upon such a gift what service and subjection he will. All these

four submissions are evident to be natural and mor ancient than law.

To speak therefore of law, which is th second part of that which is to be spoken o by way of inducement. Law no doubt is th great organ by which the sovereign power dot move, and may be truly compared to the sinews i a natural body, as the sovereignty may be compare to the spirits: for if the sinews be without th spirits, they are dead and without motion; if th spirits move in weak sinews, it causeth trembling so the laws, without the king's power, are dead the king's power, except the laws be corroborated will never move constantly, but be full of staggering and trepidation. But towards the king himself th law doth a double office or operation: the first is t intitle the king, or design him: and in that sens Bracton saith well, lib. 1. fol. 5. and lib. 3. fol. 107 "Lex facit quod ipse sit Rex;" that is, it define his title; as in our law, That the kingdom shall g to the issue female; that it shall not be departabl amongst daughters; that the half-blood shall b respected, and other points differing from the rule of common inheritance. The second is, that where of we need not fear to speak in good and happ times, such as these are, to make the ordinary powe of the king more definite or regular: for it was wel said by a father, "plenitudo potestatis est plenitud "tempestatis." And although the king, in his person be "solutus legibus," yet his acts and grants ar limited by law, and we argue them every day.

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stile which divers acts of parliaments do give unt the king: which term him very effectually and truly "our natural sovereign liege lord." And as it wa said by a principal judge here present when h served in another place, and question was moved b some occasion of the title of Bullein's lands, that h would never allow that queen Elizabeth (I remembe it for the efficacy of the phrase) should be a statut queen, but a common-law queen: so surely I shal hardly consent that the king shall be esteemed o called only our rightful sovereign, or our lawfu sovereign, but our natural liege sovereign; as acts o parliament speak: for as the common law is mor worthy than the statute law; so the law of nature is more worthy than them both. Having spoken now of the king and the law, it remaineth to speak of the privilege and benefit of naturalization itself; and that according to the rules of the law of England.

Naturalization is best discerned in the degrees whereby the law doth mount and ascend thereunto. For it seemeth admirable unto me, to consider with what a measured hand and with how true proportions our law doth impart and confer the several degrees of this benefit. The degrees are four.

The first degree of persons, as to this purpose, that the law takes knowledge of, is an alien enemy; that is, such a one as is born under the obeisance of a prince or state that is in hostility with the king of England. To this person the law giveth no benefit or protection at all, but if he come into the realm after war proclaimed, or war in fact, he comes at his

own peril, he may be used as an enemy: for the law accounts of him, but, as the Scripture saith, as of a spy that comes to see the weakness of the land. And so it is in 2 Ric. III. fol. 2. Nevertheless this admitteth a distinction. For if he come with safe-conduct otherwise it is: for then he may not be violated, either in person or goods. But yet he must fetch his justice at the fountain-head, for none of the conduit pipes are open to him; he can have no remedy in any of the king's courts; but he must complain himself before the king's privy council: there he shall have a proceeding summary from hour to hour, the cause shall be determined by natural equity, and not by rules of law; and the decree of the council shall be executed by aid of the chancery, as in 13 Ed. IV. and this is the first degree.

The second person is an alien friend, that is, such a one as is born under the obeisance of such a king or state as is confederate with the king of England, or at least not in war with him. To this person the law allotteth this benefit, that as the law accounts that the hold it hath over him, is but a transitory hold, for he may be an enemy, so the law doth indue him but with a transitory benefit, that is, of moveable goods and personal actions. But for free-hold, or lease, or actions real or mixt, he is not enabled, except it be in "autre droit." And so it is 9 E. IV. fol. 7. 19 E. IV. fol. 6. 5 Mar. and divers other books.

The third person is a denizen, using the word properly, for sometimes it is confounded with a natural born subject. This is one that is but "sub-

" ditus insitivus," or " adoptivus," and is never by birth, but only by the king's charter, and by no other mean, come he never so young into the realm, or stay he never so long. Mansion or habitation will not idenize him, no, nor swearing obedience to the king in a leet, which doth in-law the subject; but only, as I said, the king's grace and gift. To this person the law giveth an ability and capacity abridged, not in matter, but in time, and as there was a time when he was not subject, so the law doth not acknowledge him before that time. For if he purchase freehold after his denization, he may take it; but if he have purchased any before, he shall not hold it: so if he have children after, they shall inherit; but if he have any before, they shall not inherit. So as he is but privileged " a parte post," as the schoolmen say, and not " a parte ante."

The fourth and last degree is a natural born subject, which is evermore by birth, or by act of parliament; and he is complete and entire. For in the law of England there is " nil ultra," there is no more subdivision or more subtle division beyond these; and therein it seemeth to me that the wisdom of the law, as I said, is to be admired both ways, both because it distinguisheth so far, and because it doth not distinguish farther. For I know that other laws do admit more curious distinction of this privilege; for the Romans had, besides " jus " civitatis," which answereth to naturalisation, " jus " suffragii." For although a man were naturalized to take lands and inheritance, yet he was not enabled

to have a voice at passing of laws, or at election of officers. And yet farther they have "jus petiti-"onis," or "jus honorum." For though a man had voice, yet he was not capable of honour and office. But these be the devises commonly of popular or free estates, which are jealous whom they take into their number, and are unfit for monarchies; but by the law of England, the subject of that is natural born hath a capacity or ability to all benefits whatsoever; I say capacity or ability: but to reduce "potentiam in actum," is another case. For an earl of Ireland, though he be naturalized in England, yet hath no voice in the parliament of England, except we have either a call by writ, or creation by patent; but he is capable of either. But upon this quadripartite division of the ability of persons I do observe to your lordships three things, being all effectually pertinent to the question in hand.

The first is, that if any man conceive that the reasons for the post-nati might serve as well for the ante-nati, he may by the distribution which we have made plainly perceive his error. For the law looketh not back, and therefore cannot by any matter "ex "post facto," after birth, alter the state of the birth; wherein no doubt the law hath a grave and profound reason; which is this, in a few words, "Nemo subito "fingitur; aliud est nasci, aliud fieri:" we indeed more respect and affect those worthy gentlemen of Scotland whose merits and conversations we know; but the law that proceeds upon general reason, and looks upon no men's faces, affecteth and privilegeth those

which drew their first breath under the obeisance of the king of England.

The second point is, that by the former distribution it appeareth that there be but two conditions by birth, either alien, or natural born, "nam tertium penitus ignoramus." It is manifest then, that if the post-nati of Scotland be not natural born, they are alien born, and in no better degree at all than Flemings, French, Italians, Spanish, Germans, and others, which are all at this time alien friends, by reason his majesty is in peace with all the world.

The third point seemeth to me very worthy the consideration; which is, that in all the distributions of persons, and the degrees of abilities or capacities, the king's act is all in all without any manner of respect to law or paliament. For it is the king that makes an alien enemy, by proclaiming a war, wherewith the law or parliament intermeddles not. So the king only grants safe-conducts, wherewith law and parliament intermeddle not. It is the king likewise that maketh an alien friend, by concluding a peace, wherewith law and parliament intermeddle not. It is the king that makes a denizen by his charter, absolutely of his prerogative and power, wherewith law and parliament intermeddle not. And therefore it is strongly to be inferred, that as all these degrees depend wholly upon the king's act, and no ways upon law or parliament; so the fourth, although it cannot by the king's patent, but by operation of law, yet that the law, in that operation, respecteth only the king's person, without respect of

subjection to law or parliament. And thus much by way of explanation and inducement: which being all matter in effect confessed, is the strongest ground-work to that which is contradicted or controverted.

There followeth the confutation of the arguments on the contrary side.

That which hath been materially objected, may be reduced to four heads.

The first is, that the privilege of naturalization followeth allegiance, and that allegiance followeth the kingdom.

The second is drawn from that common ground, "cum duo jura concurrunt in una persona, æquum "est ac si essent in duobus;" a rule, the words whereof are taken from the civil law; but the matter of it is received in all laws; being a very line or rule of reason, to avoid confusion.

The third consisteth of certain inconveniences conceived to ensue of this general naturalization, "ipso jure."

The fourth is not properly an objection, but a pre-occupation of an objection or proof on our part, by a distinction devised between countries devolute by descent, and acquired by conquest.

For the first, it is not amiss to observe that those who maintain this new opinion, whereof there is "altum silentium" in our books of law, are not well agreed in what form to utter and express that: for some said that allegiance hath respect to the law, some to the crown, some to the kingdom, some to

the body politic of the king: so there is confusion of tongues amongst them, as it commonly cometh to pass in opinions that have their foundations in subtlety and imagination of man's wit, and not in the ground of nature. But to leave their words, and to come to their proofs: they endeavour to prove this conceit by three manner of proofs: first, by reason; then, by certain inferences out of statutes; and lastly, by certain book-cases, mentioning and reciting the forms of pleadings.

The reason they bring is this; that naturalization is an operation of the law of England; and so indeed it is, that may be the true genus of it.

Then they add, that granted, that the law of England is of force only within the kingdom and dominions of England, and cannot operate but where it is in force. But the law is not in force in Scotland, therefore that cannot endure this benefit of naturalization by a birth in Scotland.

This reason is plausible and sensible, but extremely erroneous. For the law of England, for matters of benefit or forfeitures in England, operateth over the world. And because it is truly said that "respublica continetur pœna et præmio," I will put a case or two of either.

It is plain that if a subject of England had conspired the death of the king in foreign parts, it was by the common law of England treason. How prove I that? By the statutes of 35 H. VIII. cap. 2 wherein you shall find no words at all of making any new case of treason which was not treason

before, but only of ordaining a form of trial; "ergo," it was treason before: and if so, then the law of England works in foreign parts. So of contempts, if the king send his privy seal to any subject beyond the seas, commanding him to return, and he disobey, no man will doubt but there is a contempt and yet the fact enduring the contempt was committed in foreign parts.

Therefore the law of England doth extend to acts or matters done in foreign parts. So of reward, privilege or benefit, we need seek no other instance than the instance in question; for I will put you a case that no man shall deny, where the law of England doth work and confer the benefit of naturalization upon a birth neither within the dominions of the kingdom, nor king of England. By the statute of 25 E. III. which, if you will believe Hussey, is but a declaration of the common law, all children born in any parts of the world, if they be of English parents continuing at that time as liege subjects to the king, and having done no act to forfeit the benefit of their allegiance, are "ipso facto" naturalized. Nay, if a man look narrowly into the law in this point, he shall find a consequence that may seem at the first strange, but yet cannot be well avoided; which is, that if divers families of English men and women plant themselves at Middleborough, or at Roan, or at Lisbon, and have issue, and their descendants do intermarry amongst themselves, without any intermixture of foreign blood; such descendants are naturalized to all generations: for every

generation is still of liege parents, and therefore naturalized; so as you may have whole tribes and lineages of English in foreign countries.

And therefore it is utterly untrue that the law of England cannot operate or confer naturalization, but only within the bounds of the dominions of England. To come now to their inferences upon statutes; the first is out of this statute which I last recited. In which statute it is said, that in four several places there are these words, " born within the allegiance " of England;" or again, " born without the allegi- " of England," which, say they, applies the allegiance to the kingdom, and not to the person of the king. To this the answer is easy; for there is no trope of speech more familiar than to use the place of addition for the person. So we say commonly, the line of York, or the line of Lancaster, for the lines of the duke of York, or the duke of Lancaster.

So we say the possessions of Somerset, or Warwick, intending the possessions of the dukes of Somerset or earls of Warwick. So we see earls sign, Salisbury, Northampton, for the earls of Salisbury or Northampton. And in the very same manner the statute speaks, allegiance of England, for allegiance of the king of England. Nay more, if there had been no variety in the penning of that statute, this collection had had a little more force; for those words might have been thought to have been used of purpose and in propriety; but you may find in three other several places of the same statute, allegiance and obeisance of the king of England, and especially

in the material and concluding place, that is to say, children whose parents were at the time of their birth at the faith and obeisance of the king of England. So that it is manifest by this indifferent and promiscuous use of both phrases, the one proper, the other improper, that no man can ground any inference upon these words without danger of cavillation.

The second statute out of which they infer, is a statute made in 32 Hen. VIII. touching the policy of strangers tradesmen within this realm. For the parliament finding that they did eat the Englishmen out of trade, and that they entertained no apprentices but of their own nation, did prohibit that they should receive any apprentice but the king's subjects. In which statute is said, that in nine several places there is to be found this context of words, "aliens born "out of the king's obedience;" which is pregnant, say they, and doth imply that there be aliens born within the king's obedience. Touching this inference, I have heard it said, "qui hœret in litere, "hœret in cortice;" but this is not worthy the name of "cortex," it is but "muscus corticis," the moss of the bark. For it is evident that the statute meant to speak clearly and without equivocation, and to a common understanding. Now then there are aliens in common reputation, and aliens in precise construction of law; the statute then meaning not to comprehend Irishmen, or Jerseymen, or Calaismen, for explanation-sake, lest the word alien might be extended to them in a vulgar acceptance, added those further words, "born out of the king's obedience."

Nay, what if we should say, that those words, according to the received laws of speech, are no words of difference or limitation, but of declaration or description of an alien, as if it had been said, with a "videlicet," aliens; that is, such as are born out of the king's obedience? they cannot put us from that construction. But sure I am, if the bark make for them, the pith makes for us; for the privilege of liberty which the statute means to deny to aliens of entertaining apprentices, is denied to none born within the king's obedience, call them aliens or what you will. And therefore by their reason, a "post-"natus" of Scotland shall by that statute keep what stranger apprentices he will, and so is put in the degree of an English. The third statute out of which inference is made, is the statute of 14 E. III. cap. solo, which hath been said to be our very case; and I am of that opinion too, but directly the other way. Therefore to open the scope and purpose of that statute: after that the title to the crown of France was devolute to K. E. III. and that he had changed his style, changed his arms, changed his seal, as his majesty hath done, the subjects of England, saith the statute, conceived a fear that the realm of England might become subject to the realm of France, or to the king as king of France. And I will give you the reasons of the double fear, that it should become subject to the realm of France. They had this reason of fear; Normandy had conquered England, Normandy was feudal of France, therefore because the superior seigniory of France

was now united in right with the tenancy of Normandy, and that England, in regard of the conquest, might be taken as a perquisite to Normandy, they had probable reason to fear that the kingdom of England might be drawn to be subject to the realm of France. The other fear, that England might become subject to the king as king of France, grew no doubt of this foresight, that the kings of England might be like to make their mansion and seat of their estate in France, in regard of the climate, wealth, and glory of that kingdom; and thereby the kingdom of England might be governed by the king's mandates and precepts issuing as from the king of France. But they will say, whatsoever the occasion was, here you have the difference authorised of subjection to a king generally, and subjection to a king as king of a certain kingdom: but to this I give an answer threefold:

First, it presseth not the question; for doth any man say that a "post-natus" of Scotland is naturalized in England, because he is a subject of the king as king of England? No, but generally because he is the king's subject.

Secondly, The scope of this law is to make a distinction between crown and crown; but the scope of their argument is to make a difference between crown and person. Lastly, this statute, as I said, is our very case retorted against them; for this is a direct statute of separation, which presupposeth that the common law had made an union of the crowns in some degree, by virtue of the union of the king's

person: if this statute had not been made to stop and cross the course of the common law in that point, as if Scotland now should be suitors to the king, that an act might pass to like effect, and upon like fear. And therefore if you will make good your distinction in this present case, shew us a statute for that. But I hope you can shew no statute of separation between England and Scotland. And if any man say that this was a statute declaratory of the common law, he doth not mark how that is penned; for after a kind of historical declaration in the preamble, that England was never subject to France, the body of the act is penned thus: "The king doth grant and establish:" which are words merely introductive "novæ legis," as if the king gave a charter of franchise, and did invest, by a donative, the subjects of England with a new privilege or exemption, which by the common law they had not.

To come now to the book-cases which they put; which I will couple together, because they receive one joint answer.

The first is 42 E. III. fol. where the book saith, exception was taken that the plaintiff was born in Scotland at Ross, out of the allegiance of England.

The next is 22 H. VI. fol. 38. Adrian's case; where it is pleaded that a woman was born at Bruges, out of the allegiance of England.

The third is 13 Eliz. Dyer, fol. 300, where the case begins thus: "Doctor Story qui notorie

"dignoscitur esse subditus regni Angliæ." In all these three, say they, that is pleaded, that the party is subject of the kingdom of England, and not of the king of England.

To these books I give this answer, that they be not the pleas at large, but the words of the reporter, who speaks compendiously and narratively, and not according to the solemn words of the pleading. If you find a case put, that it is pleaded a man was seised in feesimple, you will not infer upon that, that the words of the pleading were "in feodo simplici," but "sibi et hæredibus suis." But shew me some precedent of a pleading at large, of "natus sub "ligeantia regni Angliæ;" for whereas Mr. Walter said that pleadings are variable in this point, he would fain bring it to that; but there is no such matter; for the pleadings are constant and uniform in this point: they may vary in the word "fides," or "ligeantia," or "obedientia," and some other circumtances; but in the form of "regni" and "regis" they vary not: neither can there, as I am persuaded, be any one instance shewed forth to the contrary. See 9 Eliz. 4 Baggot's Assize, fol. 7. where the pleading at large is entered in the book; there you have "alienigena natus extra ligeantiam domini re-"gis Angliæ." See the precedents in the book of entries, pl. 7. and two other places, for there be no more: and there you shall find still "sub ligeantia "domini regis," or "extra legeantiam domini re-"gis." And therefore the forms of pleading, which are things so reverend, and are indeed towards

the reasons of the law, as "palma," and "pugnus," containing the reasons of the law, opened or unfolded, or displayed, they make all for us. And for the very words of reporters in books, you must acknowledge and say, "ilicet obruimur numero." For you have 22 Ass. pl. 25. 27 Ass. the prior of Shell's case, pl. 48. 14 H. IV. fol. 19. 3 H. VI. fol. 35. 6 H. VIII. in my lord Dyer, fol. 2. In all these books the very words of the reporters have "the allegiance of the king," and not, the allegiance of England. And the book in the 24 Edw. III. which is your best book, although while it is tossed at the bar, you have sometimes the words "allegiance of England," yet when it comes to Thorp, chief justice, to give the rule, he saith, "we will be "certified by the roll, whether Scotland be within "the allegiance of the king." Nay, that farther form of pleading beateth down your opinion: that it sufficeth not to say that he is born out of the allegiance of the king, and stay there, but he must shew in the affirmative, under the allegiance of what king or state he was born. The reason whereof cannot be, because it may appear whether he be a friend or an enemy, for that in a real action is all one: nor it cannot be because issue shall be taken thereupon; for the issue must arise on the other side upon "indigena" pleaded and traversed. And therefore it can have no other reason, but to apprize the court more certainly, that the country of the birth is none of those that are subject to the king. As for the trial, that it should be impossible to be

tried, I hold it not worth the answering; for the "Venire facias" shall go either where the natural birth is laid, although it be but by fiction, or if it be laid according to the truth, it shall be tried where the action is brought, otherwise you fall upon a main rock, that breaketh your argument in pieces; for how should the birth of an Irishman be tried, or of a Jerseyman? nay, how should the birth of a subject be tried, that is born of English parents in Spain or Florence, or any part of the world? For to all these the like objection of trial may be made, because they are within no countries: and this receives no answer. And therefore I will now pass on to the second main argument.

It is a rule of the civil law, say they, "Cum duo "jura," &c. when two rights do meet in one person, there is no confusion of them, but they remain still in the eye of law distinct, as if they were in several persons: and they bring examples of one man bishop of two sees, or one parson that is rector of two churches. They say this unity in the bishop or the rector doth not create any privity between the parishioners or dioceseners, more than if there were several bishops, or several parsons. This rule I allow, as was said, to be a rule not of the civil law only but of common reason, but receiveth no forced or coined but a true and sound distinction or limitation, which is, that it evermore faileth and deceiveth in cases where there is any vigour or operation of the natural person; for generally in corporations the natural body is but "suffulcimentum

"tum corporis corporati," it is but as a stock to uphold and bear out the corporate body; but otherwise it is in the case of the crown, as shall be manifestly proved in due place. But to shew that this rule receiveth this distinction, I will put but two cases; the statute of 21 H. VIII. ordaineth that a marquis may retain six chaplains qualified, a lord treasurer of England four, a privy counsellor three. The lord treasurer Paulet was marquis of Winchester, lord treasurer, of England, and privy councillor, all at once. The question was, whether he should qualify thirteen chaplains? Now by the rule "Cum duo jura" he should; but adjudged, he should not. And the reason was, because the attendance of chaplains concerned and respected his natural person; he had but one soul, though he had three offices. The other case which I will put is the case of homage. A man doth homage to his lord for a tenancy held of the manor of Dale; there descendeth unto him afterwards a tenancy held of the manor of Sale, which manor of Sale is likewise in the hands of the same lord. Now by the rule "Cum duo jura," he should do homage again, two tenancies and two seinories, though but one tenant and one lord, "æquum est ac si set in duobus:" but ruled that he should not do homage again: nay in the case of the king he shall not pay a second respect of homage, as upon grave and deliberate consideration it was resolved, 24 Hen. VIII. and "usus scaccarii," as there is said, accordingly. And the reason is no other but because when a man

is sworn to his lord, he cannot be sworn over again: he hath but one conscience, and the obligation of this oath trencheth between the natural person of the tenant and the natural person of the lord. And certainly the case of homage and tenure, and of homage leige, which is one case, are things of a near nature, save that the one is much inferior to the other; but it is good to behold these great matters of state in cases of lower element, as the eclipse of the sun is used to be in a pail of water.

The third main argument containeth certain supposed inconveniences, which may ensue of a general naturalization "ipso jure," of which kind three have been specially remembered.

The first is the loss of profit to the king upon letters of denization and purchases of aliens.

The second is the concourse of Scotsmen into this kingdom, to the enfeebling of that realm of Scotland in people, and the impoverishing of this realm of England in wealth.

The third is, that the reason of this case stayeth not within the compass of the present case; for although it were some reason that Scotsmen were naturalized, being people of the same island and language, yet the reason which we urge, which is, that they are subject to the same king, may be applied to persons every way more estranged from us than they are; as if in future time, in the king's descendents, there should be a match with Spain, and the dominions of Spain should be united with the crown of England, by one reason, say they, all

the West Indies should be naturalized; which are people not only "alterius soli," but "alterius cœli."

To these conceits of inconvenience, how easy it is to give answer, and how weak they are in themselves, I think no man that doth attentively ponder them can doubt; for how small revenue can arise of such denizations, and how honourable were it for the king to take escheats of his subjects, as if they were foreigners, for seizure of aliens' lands are in regard the king hath no hold or command of their persons and services, every one may perceive. And for the confluence of Scotsmen, I think, we all conceive the springtide is past at the king's first coming in. And yet we see very few families of them throughout the cities and boroughs of England. And for the naturalizing of the Indies, we can readily help that, when the case comes; for we can make an act of parliament of separation if we like not their consort. But these being reasons politic, and not legal, and we are not now in parliament, but before a judgment seat, I will not meddle with them, especially since I have one answer which avoids and confounds all their objections in law; which is, that the very self-same objections do hold in countries purchased by conquest. For in subjects obtained by conquest, it were more profit to indenizate by the poll; in subjects obtained by conquest they may come in too fast. And if king Henry VII had accepted the offer of Christopher Columbus, whereby the crown of England had obtained the Indies by

conquest or occupation, all the Indies had been naturalized by the confession of the adverse part. And therefore since it is confessed, that subjects obtained by conquest are naturalized, and that all these objections are common and indifferent, as well to case of conquest as case of descent, these objections are in themselves destroyed.

And therefore, to proceed now to overthrow that distinction of descent and conquest. Plato saith well, the strongest of all authorities is, if a man can allege the authority of his adversary against himself: we do urge the confession of the other side, that they confessed the Irish are naturalized; that they confess the subjects of the Isles of Jersey and Guernsey, and Berwick, to be naturalized, and the subjects of Calais and Tournay, when they were English, were naturalized; as you may find in the 5 Eliz. in Dyer, upon the question put to the judges by Sir Nicholas Bacon, lord keeper.

To avoid this, they fly to a difference, which is new-coined, and is, (I speak not to the disadvantage of the persons that use it; for they are driven to it "tanquam ad ultimum refugium;" but the difference itself,) it is, I say, full of ignorance and error. And therefore, to take a view of the supports of this difference, they allege four reasons.

The first is, that countries of conquest are made parcel of England, because they are acquired by the arms and treasure of England. To this I answer, that it were a very strange argument, that if I wax rich upon the manor of Dale, and upon the revenue

thereof purchase a close by it, that it should make that parcel of the manor of Dale. But I will set this new learning on ground with a question or case put. For I oppose them that hold this opinion with this question, If the king should conquer any foreign country by an army compounded of Englishmen and Scotsmen, as it is like, whensover wars are, so it will be, I demand, Whether this country conquered shall be naturalized both in England and Scotland, because it was purchased by the joint arms of both? and if yea, Whether any man will think it reasonable, that such subjects be naturalized in both kingdoms; the one kingdom not being naturalized toward the other?

These are the intricate consequences of conceits.

A second reason they allege is, that countries won by conquest become subject to the laws of England, which countries patrimonial are not, and that the law doth draw the allegiance, and allegiance naturalization.

But to the major proposition of that argument, touching the dependency of allegiance upon law, somewhat hath been already spoken, and full answer shall be given when we come to it. But in this place it shall suffice to say, that the minor proposition is false; that is, that the laws of England are not superinduced upon any country by conquest; but that the old laws remain until the king by his proclamation or letters patent declare other laws; and then if he will he may declare laws which be utterly repugnant, and differing from the laws of

England. And hereof many ancient precedents and records may be shewed, that the reason why Ireland is subject to the laws of England is not "ipso jure" upon conquest, but grew by a charter of king John; and that extended but to so much as was then in the king's possession; for there are records in the time of king E. I. and II. of divers particular grants to sundry subjects of Ireland and their heirs, that they might use and observe the laws of England.

The third reason is, that there is a politic necessity of intermixture of people in case of subjection by conquest, to remove alienations of mind, and to secure the state; which holdeth not in case of descent. Here I perceive Mr. Walter hath read somewhat in matter of state; and so have I likewise; though we may both quickly lose ourselves in causes of this nature. I find by the best opinions, that there be two means to assure and retain in obedience countries conquered, both very differing, almost in extremes, the one towards the other.

The one is by colonies, and intermixture of people, and transplantation of families, which Mr. Walter spoke of; and it was indeed the Roman manner: but this is like an old relic, much reverenced and almost never used. But the other, which is the modern manner, and almost wholly in practice and use, is by garrisons and citadels, and lists or companies of men of war, and other like matters of terror and bridle.

To the first of these, which is little used, it is true

that naturalization doth conduce, but to the latter it is utterly opposite, as putting too great pride and means to do hurt in those that are meant to be kept short and low. And yet in the very first case, of the Roman proceeding, naturalization did never follow by conquest, during all the growth of the Roman empire; but was ever conferred by charters, or donations, sometimes to cities and towns, sometimes to particular persons, and sometimes to nations, until the time of Adrian the emperor, and the law "In orbe "Romano:" and that law or constitution is not referred to title of conquest and arms only, but to all other titles; as by the donation and testament of kings, by submission and dedition of states, or the like: so as this difference was as strange to them as to us. And certainly I suppose it will sound strangely, in the hearing of foreign nations, that the law of England should "ipso facto" naturalize subjects of conquests, and shall not naturalize subjects which grow unto the king by descent; that is, that it should confer the benefit and privilege of naturalization upon such as cannot at the first but bear hatred and rancour to the state of England, and have had their hands in the blood of the subjects of England, and should deny the like benefit to those that are conjoined with them by a more amiable mean; and that the law of England should confer naturalization upon slaves and vassals, for people conquered are no better in the beginning, and should deny it to freemen: I say, it will be marvelled at abroad, of what complexion the laws of England be made, that

breedeth such differences. But there is little danger of such scandals; for this is a difference that the law of England never knew.

The fourth reason of this difference is, that in case of conquest the territory united can never be separated again. But in case of descent, there is a possibility; if his majesty's line should fail, the kingdoms may sever again to their respective heirs; as in the case of 8 Hen. VI. where it is said, that if land descend to a man from the ancestor on the part of his father, and a rent issuing out of it from an ancestor on the part of the mother; if the party die without issue, the rent is revived. As to this reason, I know well the continuance of the king's line is no less dear to those that allege the reason, than to us that confute it. So as I do not blame the passing of the reason: but it is answered with no great difficulty; for, first, the law doth never respect remote and foreign possibilities; as notably appeared in the great case between Sir Hugh Cholmley and Houlford in the exchequer, where one in the remainder, to the end to bridle tenant in tail from suffering a common recovery, granted his remainder to the king; and because he would be sure to have it out again without charge or trouble when his turn was served, he limited it to the king during the life of tenant in tail. Question grew, whether this grant of remainder were good, yea or no. And it was said to be frivolous and void, because it could never by any possibility execute; for tenant in tail cannot surrender; and if he died, the remainder likewise

ceased. To which it was answered, that there was a possibility that it might execute, which was thus: Put case, that tenant in tail should enter into religion, having no issue: then the remainder should execute, and the kings should hold the land during the natural life of tenant in tail, notwithstanding his civil death. But the court "una voce" exploded this reason, and said, that monasteries were down, and entries into religion gone, and they must be up again ere this could be; and that the law did not respect such remote and foreign possibilities. And so we may hold this for the like: for I think we all hope that neither of those days shall ever come, either for monasteries to be restored, or for the king's line to fail. But the true answer is, that the possibility subsequent, remote or not remote, doth not alter the operation of law for the present. For that should be, as if in case of the rent which you put, you should say, that in regard that the rent may be severed, it should be said to be, "in esse" in the mean time, and should be grantable; which is clearly otherwise. And so in the principal case, if that should be, which God of his goodness forbid, "cessante causa cessat effectus," the benefit of naturalization for the time to come is dissolved. But that altereth not the operation of the law; "rebus sic stantibus." And therefore I conclude that this difference is but a device full of weakness and ignorance; and that there is one and the same reason of naturalizing subjects by descent, and subjects by conquest; and that is the union in the

person of the king; and therefore that the case of Scotland is as clear as that of Ireland, and they that grant the one cannot deny the other. And so I conclude the second part, touching confutation.

To proceed therefore to the proofs of our part, your lordships cannot but know many of them must be already spent in the answer which we have made to the objection. For "corruptio unius, generatio alterius," holds as well in arguments, as in nature, the destruction of an objection begets a proof. But nevertheless I will avoid all iteration, lest I should seem either to distract your memories, or to abuse your patience; but will hold myself only to these proofs which stand substantially of themselves, and are not intermixed with matter of confutation. I will therefore prove unto your lordships that the post-natus of Scotland is by the law of England natural, and ought so to be adjudged, by three courses of proof.

1. First, upon point of favour of law.
2. Secondly, upon reasons and authorities of law.
3. And lastly, upon former precedents and examples.

1. Favour of law: what mean I by that? The law is equal and favoureth not. It is true not persons but things or matters it doth favour. Is it not a common principle, that the law favoureth three things, life, liberty, and dower? And what is the reason of this favour? This, because our law is grounded upon the law of nature. And these three things do flow from the law of nature, preservation

of life natural; liberty, which every beast or bird seeketh and affecteth naturally; the society of man and wife, whereof dower is the reward natural. It is well, doth the law favour liberty so highly, as a man shall enfranchise his bondman when he thinketh not of it, by granting to him lands or goods; and is the reason of it "quia natura omnes homines erant "liberi;" and that servitude or villenage doth cross and abridge the law of nature? And doth not the self-same reason hold in the present case? For, my lords, by the law of nature all men in the world are naturalized one towards another; they were all made of one lump of earth, of one breath of God; they had the same common parents: nay, at the first they were, as the Scripture sheweth, "unius labii," of one language, until the curse; which curse, thanks be to God, our present case is exempted from. It was civil and national laws that brought in these words, and differences, of "civis" and "exterus," alien and native. And therefore because they tend to abridge the law of nature, the law favoureth not them, but takes them strictly; even as our law hath an excellent rule, That customs of towns and boroughs shall be taken and construed strictly and precisely, because they do abridge and derogate from the law of the land. So by the same reason, all national laws whatsoever are to be taken strictly and hardly in any point wherein they abridge and derogate from the law of nature. Whereupon I conclude that your lordships cannot judge the law for the other side, except the case be "luce clarius." And

if it appear to you but doubtful, as I think no man in his right senses but will yield it to be at least doubtful, then ought your lordships, under your correction be it spoken, to pronounce for us because of the favour of the law. Furthermore as the law of England must favour naturalization as a branch of the law of nature, so it appears manifestly, that it doth favour it accordingly. For is it not much to make a subject naturalized? By the law of England, it should suffice, either place or parents, if he be born in England, it is no matter though his parents be Spaniards, or what you will. On the other side, if he be born of English parents, it skilleth not though he be born in Spain, or in any other place of the world. In such sort doth the law of England open her lap to receive in people to be naturalized; which indeed sheweth the wisdom and excellent composition of our law, and that it is the law of a warlike and magnanimous nation fit for empire. For look, and you shall find that such kind of estates have been ever liberal in point of naturalization; whereas merchant-like and envious estates have been otherwise.

For the reasons of law joined with authorities, I do first observe to your lordships, that our assertion or affirmation is simple and plain: that it sufficeth to naturalization, that there be one king, and that the party be "natus ad fidem regis," agreeable to the definition of Littleton, which is: Alien is he which is born out of the allegiance of our lord the king. They of the other side speak of respects, and

"quoad," and "quatenus," and such subtilties and distinctions. To maintain therefore our assertion, I will use three kinds of proof.

The first is, that allegiance cannot be applied to the law or kingdom, but to the person of the king, because the allegiance of the subject is more large and spacious, and hath a greater latitude and comprehension than the law or the kingdom. And therefore it cannot be a dependency of that without the which it may of itself subsist.

The second proof which I will use is, that the natural body of the king hath an operation and influence upon his body politic, as well as his body politic hath upon his body natural; and therefore that although his body politic of king of England, and his body politic of king of Scotland, be several and distinct, yet nevertheless his natural person, which is one, hath an operation upon both, and createth a privity between them.

And the third proof is the binding text of five several statutes.

For the first of these, I shall make it manifest, that the allegiance is of a greater extent and dimension than laws or kingdom, and cannot consist by the laws merely; because it began before laws, it continueth after laws, and it is in vigour where laws are suspended and have not their force. That it is more ancient than law, appeareth by that which was spoken in the beginning by way of inducement, where I did endeavour to demonstrate, that the original age of kingdoms was governed by natural

equity, that kings were more ancient than lawgivers, that the first submissions were simple, and upon confidence to the person of kings, and that the allegiance of subjects to hereditary monarchies can no more be said to consist by laws, than the obedience of children to parents.

That allegiance continueth after laws, I will only put the case, which was remembered by two great judges in a great assembly, the one of them now with God: which was, that if a king of England should be expulsed his kingdom, and some particular subjects should follow him in flight or exile in foreign parts, and any of them there should conspire his death; that upon his recovery of his kingdom, such a subject might by the law of England be proceeded with for treason committed and perpetrated at what time he had no kingdom, and in place where the law did not bind.

That allegiance is in vigour and force where the power of law hath a cessation, appeareth notably in time of wars, for "silent leges inter arma." And yet the sovereignty and imperial power of the king is so far from being then extinguished or suspended, as contrariwise it is raised and made more absolute; for then he may proceed by his supreme authority, and martial law, without observing formalities of the laws of his kingdom. And therefore whosoever speaketh of laws, and the king's power by laws, and the subjects obedience or allegiance to laws, speak but of one half of the crown. For Bracton, out of Justinian, doth truly define the crown to consist of laws

and arms, power civil and martial, with the latter whereof the law doth not intermeddle: so as where it is much spoken, that the subjects of England are under one law, and the subjects of Scotland are under another law, it is true at Edinburgh or Stirling, or again in London or York; but if Englishmen and Scotsmen meet in an army royal before Calais, I hope then they are under one law. So likewise not only in time of war, but in time of peregrination: If a king of England travel or pass through foreign territories, yet the allegiance of his subjects followeth him: as appeareth in that notable case which is reported in Fleta, where one of the train of king Edward I. as he passed through France from the holy land, embezzled some silver plate at Paris, and jurisdiction was demanded of this crime by the French king's counsel at law, "ratione "soli," and demanded likewise by the officers of king Edward, "ratione personæ;" and after much solemnity, contestation, and interpleading, it was ruled and determined for king Edward, and the party tried and judged before the knight marshal of the king's house, and hanged after the English law, and execution in St. Germain's meadows. And so much for my first proof.

For my second main proof, that is drawn from the true and legal distinction of the king's several capacities; for they that maintain the contrary opinion do in effect destroy the whole force of the king's natural capacity, as if it were drowned and swallowed up by his politic. And therefore I will first prove to

your lordships, that his two capacities are in no sort confounded. And secondly, that as his capacity politic worketh so upon his natural person, as it makes it differ from all other the natural persons of his subjects: so "e converso," his natural body worketh so upon his politic, as the corporation of the crown utterly differeth from all other corporations within the realm.

For the first, I will vouch you the very words which I find in that notable case of the duchy, where the question was, whether the grants of king Edward VI. for duchy lands should be avoided in points of nonage? The case as your lordships know well, is reported by Mr. Plowden as the general resolution of all the judges of England, and the king's learned counsel, Rouswell the solictor only excepted; there I find the said words, Comment. fol. 215. "There is in the king not a body natural "alone, nor a body politic alone, but a body natural "and politic together: "corpus corporatum in cor- "pore naturali, et corpus naturale in corpore corpo- "rato." The like I find in the great case of the lord Berkley set down by the same reporter, Comment. fol. 234. "Though there be in the king two bodies, "and that those two bodies are conjoined, yet are they "by no means confounded the one by the other."

Now then to see the mutual and reciprocal intercourse, as I may term it, or influence or communication of qualities, that these bodies have the one upon the other: the body politic of the crown

induceth the natural person of the king with these perfections: That the king in law shall never be said to be within age: that his blood shall never be corrupted; and that if he were attainted before, the very assumption of the crown purgeth it. That the king shall not take but by matter of record, although he take in his natural capacity as upon a gift in tail. That his body in law shall be said to be as it were immortal; for there is no death of the king in law, but a demise, as it is termed: with many other the like privileges and differences from other natural persons too long to rehearse, the rather because the question laboureth not in that part. But on the contrary part let us see what operations the king's natural person hath upon his crown and body politic; of which the chiefest and greatest is, that it causeth the crown to go by descent which is a thing strange and contrary to the course of all corporations, which evermore take in succession and not by descent; for no man can shew me in all the corporations of England, of what nature soever, whether they consist of one person or of many; or whether they be temporal or ecclesiastical, any one takes to him and his heirs, but all to him and his successors. And therefore here you may see what a weak course that is, to put cases of bishops and parsons, and the like, and to apply them to the crown. For the king takes to him and his heirs in the manner of a natural body, and the word, successors, is but superfluous: and where that is used, that is ever

duly placed after the word, heirs, "the king, his "heirs, and successors."

Again, no man can deny but "uxor et filius sunt "nomina naturæ." A corporation can have no wife, nor a corporation can have no son: how is it then that it is treason to compass the death of the queen or of the prince? There is no part of the body politic of the crown in either of them, but it is entirely in the king. So likewise we find in the case of the lord Berkley, the question was, whether the statute of 35 Henry VIII. for that part which concerned queen Catharine Par's jointure, were a public act or no, of which the judges ought to take notice, not being pleaded; and judged a public act. So the like question came before your lordship, my lord Chancellor, in serjeant Heale's case: whether the statute of 11 Edward III. concerning the entailing of the dukedom of Cornwall to the prince, were a public act or no; and ruled likewise a public act. Why? no man can affirm but these be operations of law, proceeding from the dignity of the natural person of the king; for you shall never find that another corporation whatsoever of a bishop, or master of a college, or mayor of London, worketh any thing in law upon the wife or son of the bishop or the mayor. And to conclude this point, and withal to come near to the case in question, I will shew you where the natural person of the king hath not only an operation in the case of his wife and children, but likewise in the case of his subjects, which is the very question in hand. As for example, I put this case: Can a

Scotsman, who is a subject to the natural person of the king, and not to the crown of England; can a Scotsman, I say, be an enemy by the law to the subjects of England? Or must he not of necessity, if he should invade England, be a rebel and no enemy, not only as to the king, but as to the subject? Or can any letters of mart or reprisal be granted against a Scotsman that shall spoil an Englishman's goods at sea? And certainly this case doth press exceeding near the principal case; for it proveth plainly, that the natural person of the king hath such a communication of qualities with his body politic, as it makes the subjects of either kingdom stand in another degree of privity one towards the other, than they did before. And so much for the second proof.

For the five acts of parliament which I spoke of, which are concluding to this question.

The first of them is that concerning the banishment of Hugh Spencer in the time of king Edward II. in which act there is contained the charge and accusation whereupon his exile proceeded. One article of which charge is set down in these words: "Homage and oath of the subject is more by reason "of the crown than by reason of the person of the "king, So that if the king doth not guide himself "by reason in right of the crown, his lieges are "bound by their oath to the crown to remove the "king."

By which act doth plainly appear the perilous consequence of this distinction concerning the person of the king and the crown. And yet I do ac-

knowledge justly and ingenuously a great difference between that assertion and this, which is now maintained: for it is one thing to make things distinct, another thing to make them separable, "aliud est distinctio, aliud separatio;" and therefore I assure myself, that those that now use and urge that distinction, do as firmly hold, that the subjection to the king's person and to the crown are inseparable, though distinct, as I do. And it is true that the poison of the opinion and assertion of Spencer is like the poison of a scorpion, more in the tail than in the body: for it is the inference that they make, which is, that the king may be deposed or removed, that is the treason and disloyalty of that opinion. But by your leave, the body is never a whit the more wholesome meat for having such a tail belonging to it: therefore we see that is "locus lubricus," an opinion from which a man may easily slide into an absurdity. But upon this act of parliament I will only note one circumstance more, and so leave it, which may add authority unto it in the opinion of the wisest; and that is, that these Spencers were not ancient nobles or great patriots that were charged and prosecuted by upstarts and favourites: for then it might be said, that it was but the action of some flatterers, who used to extol the power of monarchs to be infinite: but it was contrary; a prosecution of those persons being favourites by the nobility; so as the nobility themselves, which seldom do subscribe to the opinion of an infinite power of monarchs, yet even they could not endure, but their

blood did rise to hear that opinion, that subjection is owing to the crown rather than to the person of the king.

The second act of parliament which determined this case, is the act of recognition in the first year of his majesty, wherein you shall find, that in two several places, the one in the preamble, the other in the body of the act, the parliament doth recognise that these two realms of England and Scotland are under one imperial crown. The parliament doth not say under one monarchy or king, which might refer to the person, but under one imperial crown, which cannot be applied but to the sovereign power of regiment comprehending both kingdoms. And the third act of parliament is the act made in the fourth year of his majesty's reign, for the abolition of hostile laws: wherein your lordships shall find likewise in two places, that the parliament doth acknowledge, that there is an union of these two kingdoms already begun in his majesty's person: so as by the declaration of that act, they have not only one king, but there is an union in inception in the kingdoms themselves.

These two are judgments in parliament by way of declaration of law, against which no man can speak. And certainly these are righteous and true judgments to be relied upon; not only for the authority of them, but for the verity of them; for to any that shall well and deeply weigh the effects of law upon this conjunction, it cannot but appear, that although "partes integrales" of the kingdom, as the

philosophers speak, such as the laws, the officers, the parliament, are not yet commixed; yet nevertheless there is but one and the self-same fountain of sovereign power depending upon the ancient submission, whereof I spake in the beginning; and in that sense the crowns and the kingdoms are truly said to be united.

And the force of this truth is such, that a grave and learned gentleman, that defended the contrary opinion, did confess thus far: That in ancient times, when monarchies, as he said, were but heaps of people without any exact form of policy; that then naturalization and communication of privileges did follow the person of the monarch; but otherwise since states were reduced to a more exact form: so as thus far we did consent; but still I differ from him in this, that these more exact forms, wrought by time, and custom, and laws, are nevertheless still upon the first foundation, and do serve only to perfect and corroborate the force and bond of the first submission, and in no sort to disannul or destroy it.

And therefore with these two acts do I likewise couple the act of 14 Edward III. which hath been alleged of the other side. For by collating of that act with this former two, the truth of that we affirm will the more evidently appear, according unto the rule of reason: "opposita juxta se posita magis elu-"cesunt." That act of 14 is an act of separation. These two acts formerly recited are acts tending to union. This act is an act that maketh a new law; it is by the words of grant and establish. These two

acts declare the common law as it is, being by words of recognition and confession.

And therefore upon the difference of these laws you may substantially ground this position: That the common law of England, upon the adjunction of any kingdom unto the king of England, doth make some degree of union in the crowns and kingdoms themselves; except by a special act of parliament they be dissevered.

Lastly, the fifth act of parliament which I promised, is the act made in the 42 of E. III. cap. 10. which is an express decision of the point in question. The words are, "Item, (upon the petition put into "parliament by the commons) that infants born be- "yond the seas in the seigniories of Calais, and else- "where within the lands and seigniories that pertain "to our sovereign lord the king beyond the seas, be "as able and inheritable of their heritage in England, "as other infants born within the realm of England, "it is accorded that the common law and the statute "formerly made be holden."

Upon this act I infer thus much; first, that such as the petition mentioneth were naturalized, the practice shews: then if so, it must be either by common law or statute, for so the words report: not by statute, for there is no other statute but 25 E. III. and that extends to the case of birth out of the king's obedience, where the parents are English: "ergo" it was by the common law, for that only remains. And so by the declaration of this statute at the common law, "all infants, born within the lands and

" seigniories (for I give you the very words again) " that pertain to our sovereign lord the king, (it is " not said, as are the dominions of England) are as " able and inheritable of their heritage in England, " as other infants born within the realm of England." What can be more plain? And so I leave statutes and go to precedents; for though the one do bind more, yet the other sometimes doth satisfy more.

For precedents, in the producing and using of that kind of proof, of all others it behoveth them to be faithfully vouched; for the suppressing or keeping back of a circumstance, may change the case: and therefore I am determined to urge only such precedents, as are without all colour or scruple of exception or objection, even of those objections which I have, to my thinking, fully answered and confuted. This is now, by the providence of God, the fourth time that the line and kings of England have had dominions and seigniories united unto them as patrimonies, and by descent of blood; four unions, I say, there have been inclusive with this last. The first was of Normandy, in the person of William, commonly called the Conqueror. The second was of Gascoigne, and Guienne, and Anjou, in the person of king Henry II.; in his person, I say, though by several titles. The third was of the crown of France, in the person of king Edward III. And the fourth of the kingdom of Scotland, in his majesty. Of these I will set aside such as by any cavillation can be excepted unto. First, I will set aside Normandy, because it will be said, that the difference of coun-

tries accruing by conquest, from countries annexed by descent, in matter of communication of privileges, holdeth both ways, as well of the part of the conquering kingdom, as the conquered; and therefore that although Normandy was not a conquest of England, yet England was a conquest of Normandy, and so a communication of privileges between them. Again, set aside France, for that it will be said that although the king had a title in blood and by descent, yet that title was executed and recovered by arms, so as it is a mixt title of conquest and descent, and therefore the precedent not so clear.

There remains then Gascoigne and Anjou, and that precedent likewise I will reduce and abridge to a time to avoid all question. For it will be said of them also, that after they were lost and recovered "in ore gladii," that the ancient title of blood was extinct; and that the king was in upon his new title by conquest; and Mr. Walter hath found a book-case in 13 H. VI. abridged by Mr. Fitz-Herbert, in title of "Protection, placito" 56, where a protection was cast, "quia profecturus in Gasconiam" with the earl of Huntingdon, and challenged because it was not a voyage royal; and the justices thereupon required the sight of the commission, which was brought before them, and purported power to pardon felonies and treason, power to coin money, and power to conquer them that resist: whereby Mr. Walter, finding the word conquest, collected that the king's title at that time was reputed to be by conquest; wherein I may not omit to give "obiter" that answer,

which law and truth provide, namely, that when any king obtaineth by war a country whereunto he hath right by birth, that he is ever in upon his ancient right, not upon his purchase by conquest; and the reason is, that there is as well a judgment and recovery by war and arms, as by law and course of justice. For war is a tribunal-seat, wherein God giveth the judgment, and the trial is by battle, or duel, as in the case of trial of private right: and then it follows, that whosoever cometh in by eviction, comes in his "remitter;" so as there will be no difference in countries whereof the right cometh by descent, whether the possession be obtained peaceably or by war. But yet nevertheless, because I will utterly take away all manner of evasion and subterfuge, I will yet set apart that part of time, in and during the which the subjects of Gascoigne and Guienne might be thought to be subdued by a re-conquest. And therefore I will not meddle with the prior of Shelley's case, though it be an excellent case; because it was in the time of 27 E. III. neither will I meddle with any cases, records, or precedents, in the time of king H. V. or king H. VI. for the same reason; but will hold myself to a portion of time from the first uniting of these provinces in the time of king H. II. until the time of king John, at what time those provinces were lost; and from that time again unto the seventeenth year of the reign of king E. II. at what time the statute of "prærogativa "regis" was made, which altered the law in the point in hand.

That both in these times the subjects of Gascoigne, and Guienne, and Anjou, were naturalized for inheritance in England, by the laws of England, I shall manifestly prove; and the proof proceeds, as to the former time, which is our case, in a very high degree "a minore ad majus," and as we say, "a "multo fortiori." For if this privilege of naturalization remained unto them when the countries were lost, and became subjects in possession to another king, much more did they enjoy it as long as they continued under the king's subjection.

Therefore to open the state of this point. After these provinces were, through the perturbations of the state in the unfortunate time of king John, lost and severed, the principal persons which did adhere unto the French, were attainted of treason, and their escheats here in England taken and seized. But the people, that could not resist the tempest when their heads and leaders were revolted, continued inheritable to their possessions in England; and reciprocally the people of England inherited and succeeded to their possessions in Gascoigne, and were both accounted "ad fidem utriusque regis," until the statute of "prærogativa regis;" wherein the wisdom and justice of the law of England is highly to be commended. For of this law there are two grounds of reason, the one of equity, the other of policy; that of equity was, because the common people were in no fault, but as the Scripture saith in a like case, "quid fecerunt oves istæ?" It was the cowardice and disloyalty of their governors that

deserved punishment, but what hath these sheep done? And therefore to have punished them, and deprived them of their lands and fortunes, had been unjust. That of policy was, because if the law had forthwith, upon the loss of the countries by an accident of time, pronounced the people for aliens, it had been a kind of accession of their right and a disclaimer in them, and so a greater difficulty to recover them. And therefore we see the statute which altered the law in this point, was made in the time of a weak king, that, as it seemed, despaired ever to recover his right, and therefore thought better to have a little present profit by escheats, than the continuance of his claim, and the countenance of his right, by the admitting of them to enjoy their inheritance as they did before.

The state therefore of this point being thus opened, it resteth to prove our assertion; that they were naturalized; for the clearing whereof I shall need but to read the authorities, they be so direct and pregnant. The first is the very text of the statute of "prærogativa regis. Rex habebit escætas "de terris Normannorum, cujuscunque feodi fuerint, "salvo servitio, quod pertinet ad capitales dominos "feodi illius: et hoc similiter intelligendum est, si "aliqua hœreditas descendat alicui nato in partibus "transmarinis, et cujus antecessores fuerunt ad fidem "regis Franciæ, ut tempore regis Johannis, et non "ad fidem regis Angliæ, sicut contigit de baronia "Monumetæ" &c.

By which statute it appears plainly, that before

the time of king John there was no colour of any escheat, because they were the king's subjects in possession, as Scotland now is; but only determines the law from that time forward.

This statute, if it had in it any obscurity, it is taken away by two lights, the one placed before it; and the other placed after it; both authors of great credit, the one for ancient, the other for late times: the former is Bracton, in his cap. "De exceptionibus," lib. 5. fol. 427. and his words are these: "Est "etiam et alia exceptio quæ tenenti competit ex "persona petentis, propter defectum nationis, quæ "dilatoria est, et non perimit actionem, ut si quis "alienigena qui fuerit ad fidem regis Franciæ, et "actionem instituat versus aliquem, qui fuerit ad "fidem regis Angliæ, tali non respondeatur, saltem "donec terræ fuerint communes."

By these words it appeareth, that after the loss of the provinces beyond the seas, the naturalization of the subjects of those provinces was in no sort extinguished, but only was in suspense during the time of war, and no longer; for he saith plainly, that the exception, which we call plea, to the person of an alien, was not peremptory, but only dilatory, that is to say, during the time of war, and until there were peace concluded, which he terms by these words, "donec terræ fuerint communes:" which, though the phrase seem somewhat obscure, is expounded by Bracton himself in his fourth book, fol. 297. to be of peace made and concluded, whereby the inhabitants of England and those provinces might enjoy the

profits and fruits of their lands in either place "communiter," that is, respectively, or as well the one as the other: so as it is clear they were no aliens in right, but only interrupted and debarred of suits in the king's courts in time of war.

The authority after the statute is that of Mr. Stamford, the best expositor of a statute that hath been in our law; a man of reverend judgment and excellent order in his writings; his words are in his exposition upon the branch of the statute which we read before. "By this branch it should appear, that "at this time men of Normandy, Gascoigne, Guienne, "Anjou, and Britain, were inheritable within this "realm, as well as Englishmen, because that they "were sometimes subjects to the kings of England, "and under their dominion, until king John's time, "as is aforesaid: and yet after his time, those men, "saving such whose lands were taken away for "treason, were still inheritable within this realm "till the making of this statute; and in the time of "peace between the two kings of England and "France, they were answerable within this realm, "if they had brought any action for their lands and "tenements."

So as by these three authorities, every one so plainly pursuing the other, we conclude that the subjects of Gascoigne, Guienne, Anjou, and the rest, from their first union by descent, until the making of the statute of "prærogativa regis," were inheritable in England, and to be answered in the king's courts in all actions, except it were in time of war.

Nay, more, which is "de abundanti," that when the provinces were lost, and disannexed, and that the king was but king "de jure" over them, and not "de facto;" yet nevertheless the privilege of naturalization continued.

There resteth yet one objection, rather plausible to a popular understanding than any ways forcible in law or learning, which is a difference taken between the kingdom of Scotland and these duchies, for that the one is a kingdom, and the other was not so; and therefore that those provinces being of an inferior nature, did acknowledge our laws, and seals, and parliament, which the kingdom of Scotland doth not.

This difference was well given over by Mr. Walter; for it is plain that a kingdom and absolute dukedom, or any other sovereign estate do differ "honore," and not "potestate:" for divers duchies and countries that are now, were sometimes kingdoms: and divers kingdoms that are now, were sometimes duchies, or of other inferior stile: wherein we need not travel abroad, since we have in our own state so notorious an instance of the country of Ireland, whereof king H. VIII. of late time, was the first that writ himself king, the former stile being lord of Ireland, and no more; and yet kings had the same authority before, that they have had since, and the same nation the same marks of a sovereign state, as their parliaments, their arms, their coins, as they now have: so as this is too superficial an allegation to labour upon.

And if any do conceive that Gascoigne and

Guienne were governed by the laws of England: First that cannot be in reason; for it is a true ground, That wheresoever any prince's title unto any country is by law, he can never change the laws, for that they create his title; and therefore, no doubt those duchies retained their own laws; which if they did, then they could not be subject to the laws of England. And next, again, the fact or practice was otherwise, as appeareth by all consent of story and record; for those duchies continued governed by the civil law, their trials by witnesses, and not by jury, their lands testamentary, and the like.

Now for the colours that some have endeavoured to give, that they should have been subordinate to the government of England; they were partly weak, and partly such as make strongly against them; for as to that, that writs of "Habeas Corpus" under the great seal of England have gone to Gascoigne, it is no manner of proof; for that the king's writs, which are mandatory, and not writs of ordinary justice, may go to his subjects into any foreign parts whatsoever, and under what seal it pleaseth him to use. And as to that, that some acts of parliament have been cited, wherein the parliaments of England have taken upon them to order matters of Gascoigne; if those statutes be well looked into, nothing doth more plainly convince the contrary, for they intermeddle with nothing but that that concerneth either the English subjects personally, or the territories of England locally, and never the subjects of

Gascoigne; for look upon the statute of 27 E. III. cap. 5. there it is said, that there shall be no forestalling of wines. But by whom? Only by English merchants; not a word of the subjects of Gascoigne, and yet no doubt they might be offenders in the same kind.

So in the sixth chapter it is said, that all merchants Gascoignes may safely bring wines into what part it shall please them: here now are the persons of Gascoignes; but then the place whither? Into the realm of England. And in the seventh chapter, that erects the ports of Bourdeaux and Bayonne for the staple towns of wine; the statute ordains, "that if any," but who? "English merchant, or his "servants, shall buy or bargain otherwhere, his body "shall be arrested by the steward of Gascoigne, or "the constable of Bourdeaux:" true, for the officers of England could not catch him in Gascoigne; but what shall become of him, shall he be proceeded with within Gascoigne? No, but he shall be sent over into England into the Tower of London.

And this doth notably disclose the reason of that custom which some have sought to wrest the other way: that custom, I say, whereof a form doth yet remain, that in every parliament the king doth appoint certain committees in the upper house to receive the petitions of Normandy, Guienne, and the rest; which as by the former statute doth appear, could not be for the ordering of the governments there, but for the liberties and good usage of the subjects

of those parts when they came hither, or "vice "versa," for the restraining of the abuses and misdemeanors of our subjects when they went thither.

Wherefore I am now at an end. For us to speak of the mischiefs, I hold it not fit for this place, lest we should seem to bend the laws to policy, and not to take them in their true and natural sense. It is enough that every man knows, that it is true of these two kingdoms, which a good father said of the churches of Christ: "si inseparabiles insuperabiles." Some things I may have forgot, and some things, perhaps, I may forget willingly; for I will not press any opinion or declaration of late time which may prejudice the liberty of this debate; but "ex dictis, "et ex non dictis," upon the whole matter I pray judgment for the plaintiff.

TRACTS

RELATING TO IRELAND.

CERTAIN

CONSIDERATIONS

TOUCHING

THE PLANTATION IN IRELAND.

PRESENTED TO HIS MAJESTY, 1606.

TO THE KING.

It seemeth God hath reserved to your majesty's times two works, which amongst the works of kings have the supreme pre-eminence; the union, and the plantation of kingdoms. For although it be a great fortune for a king to deliver or recover his kingdom from long continued calamities: yet in the judgment of those that have distinguished of the degrees of sovereign honour, to be a founder of estates or kingdoms, excelleth all the rest. For, as in arts and sciences, to be the first inventor is more that to illustrate or amplify: and as in the works of God, the creation is greater than the preservation; and as in the works of nature, the birth and nativity is more than the continuance: so in kingdoms, the first foundation or plantation is of more noble dignity and merit than all that followeth. Of which foundations there being but two kinds; the first, that maketh one of more; and the second that maketh one of none: the latter resembling the creation of

the world, which way "de nihilo ad quid;" and the former, the edification of the Church, which was "de multiplici ad simplex, vel ad unum:" it hath pleased the divine providence, in singular favour to your majesty, to put both these kinds of foundations or regenerations into your hand: the one, in the union of the island of Britain; the other, in the plantation of great and noble parts of the island of Ireland. Which enterprises being once happily accomplished, then that which was uttered by one of the best orators, in one of the worst verses, "O for-"tunatam natam me consule Romam!" may be far more truly and properly applied to your majesty's acts; "natam te rege Britanniam; natam Hiber-"niam." For he spake improperly of deliverance and preservation; but in these acts of yours it may be verified more naturally. For indeed unions and plantations are the very nativities of birth-days of kingdoms: wherein likewise your majesty hath yet a fortune extraordinary, and differing from former examples in the same kind. For most part of unions and plantations of kingdoms have been founded in the effusion of blood; but your majesty shall build "in solo puro, et in area pura," that shall need no sacrifices expiatory for blood; and therefore, no doubt, under an higher and more assured blessing. Wherefore, as I adventured, when I was less known and less particularly bound to your majesty, than since by your undeserved favour I have been, to write somewhat touching the union, which your majesty was pleased graciously to accept,

and which since I have to my power seconded by my travails, not only in discourse, but in action: so I am thereby encouraged to do the like, touching this matter of plantation; hoping that your majesty will, through the weakness of my ability, discern the strength of my affection, and the honest and fervent desire I have to see your majesty's person, name, and times, blessed and exalted above those of your royal progenitors. And I was the rather invited this to do, by the remembrance, that when the lord Chief Justice deceased, Popham, served in the place wherein I now serve, and afterwards in the attorney's place; he laboured greatly in the last project, touching the plantation of Munster: which nevertheless, as it seemeth, hath given more light by the errors thereof, what to avoid, than by the direction of the same, what to follow.

First therefore, I will speak somewhat of the excellency of the work, and then of the means to compass and effect it.

For the excellency of the work, I will divide it into four noble and worthy consequences that will follow thereupon.

The first of the four, is honour; whereof I have spoken enough already, were it not that the harp of Ireland puts me in mind of that glorious emblem or allegory, wherein the wisdom of antiquity did figure and shadow out works of this nature. For the poets feigned that Orpheus, by the virtue and sweetness of his harp, did call and assemble the beasts and birds, of their nature wild and savage, to

stand about him, as in a theatre; forgetting their affections of fierceness, of lust, and of prey; and listening to the tunes and harmonies of the harp; and soon after called likewise the stones and woods to remove, and stand in order about him: which fable was anciently interpreted of the reducing and plantation of kingdoms; when people of barbarous manners are brought to give over and discontinue their customs of revenge and blood, and of dissolute life, and of theft, and of rapine; and to give ear to the wisdom of laws and governments; whereupon immediately followeth the calling of stones for building and habitation; and of trees for the seats of houses, orchards, inclosures, and the like. This work therefore, of all other most memorable and honourable, your majesty hath now in hand; especially, if your majesty join the harp of David, in casting out the evil spirit of superstition, with the harp of Orpheus, in casting out desolation and barbarism.

The second consequence of this enterprise, is the avoiding of an inconvenience, which commonly attendeth upon happy times, and is an evil effect of a good cause. The revolution of this present age seemeth to incline to peace, almost generally in these parts; and your majesty's most Christian and virtuous affections do promise the same more especially to these your kingdoms. An effect of peace in fruitful kingdoms, where the stock of people receiving no consumption nor diminution by war, doth continually multiply and increase, must in the end

be a surcharge or overflow of people more than the territories can well maintain; which many times, insinuating a general necessity and want of means into all estates, doth turn external peace into internal troubles and seditions. Now what an excellent diversion of this inconvenience is ministred, by God's providence, to your majesty, in this plantation of Ireland; wherein so many families may receive sustentation and fortunes; and the discharge of them also out of England and Scotland may prevent many seeds of future perturbations: so that it is, as if a man were troubled for the avoidance of water from the place where he hath built his house, and afterwards should advise with himself to cast those waters, and to turn them into fair pools or streams, for pleasure, provision, or use. So shall your majesty in this work have a double commodity, in the avoidance of people here, and in making use of them there.

The third consequence is the great safety that is like to grow to your majesty's estate in general by this act; in discomfiting all hostile attempts of foreigners, which the weakness of that kingdom hath heretofore invited: wherein I shall not need to fetch reasons afar off, either for the general or particular. For the general, because nothing is more evident than that, which one of the Romans said of Peloponnesus: "Testudo intra tegumen "tuta est;" the tortoise is safe within her shell: but if she put forth any part of her body, then it endangereth not only the part which is so put forth,

but all the rest. And so we see in armour, if any part be left naked, it puts in hazard the whole person. And in the natural body of man, if there be any weak or affected part, it is enough to draw rheums or malign humours unto it, to the interruption of the health of the whole body.

And for the particular, the example is too fresh, that the indisposition of that kingdom hath been a continual attractive of troubles and infestations upon this estate; and though your majesty's greatness doth in some sort discharge this fear, yet with your increase of power it cannot be, but envy is likewise increased.

The fourth and last consequence is the great profit and strength which is like to redound to your crown, by the working upon this unpolished part thereof: whereof your majesty, being in the strength of your years, is like, by the good pleasures of almighty God, to receive more than the first-fruits; and your posterity a growing and springing vein of riches and power. For this island being another Britain, as Britain was said to be another world, is endowed with so many dowries of nature, considering the fruitfulness of the soil, the ports, the rivers, the fishings, the quarries, the woods, and other materials; and especially the race and generation of men, valiant, hard, and active, as it is not easy, no not upon the continent, to find such confluence of commodities, if the hand of man did join with the hand of nature. So then for the

excellency of the work, in point of honour, policy, safety, and utility, here I cease.

For the means to effect this work, I know your majesty shall not want the information of persons expert and industrious, which have served you there, and know the region: nor the advice of a grave and prudent council of estate here; which know the pulses of the hearts of people, and the ways and passages of conducting great actions; besides that which is above all, which is that fountain of wisdom and universality which is in yourself; yet notwithstanding in a thing of so public a nature, it is not amiss for your majesty to hear variety of opinion: for, as Demosthenes saith well, the good fortune of a prince or state doth sometimes put a good motion into a fool's mouth. I do think therefore the means of accomplishing this work consisteth of two principal parts. The first, the invitation and encouragement of undertakers; the second, the order and policy of the project itself. For as in all engines of the hand there is somewhat that giveth the motion and force, and the rest serveth to guide and govern the same: so it is in these enterprises or engines of estate. As for the former of these, there is no doubt, but next unto the providence and finger of God, which writeth these virtuous and excellent desires in the tables of your majesty's heart; your authority and affection is "primus motor" in this cause; and therefore the more strongly and fully your majesty shall declare

yourself in it, the more shall you quicken and animate the whole proceeding. For this is an action, which as the worthiness of it doth bear it, so the nature of it requireth it to be carried in some height of reputation, and fit, in mine opinion, for pulpits and parliaments, and all places to ring and resound of it. For that which may seem vanity in some things, I mean matter of fame, is of great efficacy in this case.

But now let me descend to the inferior spheres, and speak what co-operation in the subjects or undertakers may be raised and kindled, and by what means. Therefore to take plain grounds, which are the surest: all men are drawn into actions by three things, pleasure, honour, and profit. But before I pursue these three motives, it is fit in this place to interlace a word or two of the quality of the undertakers: wherein my opinion simply is, that if your majesty shall make these portions of land which are to be planted, as rewards or as suits, or as fortunes for those that are in want, and are likeliest to seek after them; that they will not be able to go through with the charge of good and substantial plantations, but will "deficere in opere "medio;" and then this work will succeed, as Tacitus saith, "acribus initiis, fine incurioso." So that this must rather be an adventure for such as are full, than a setting up of those that are low of means: for those men indeed are fit to perform these undertakings, which were fit to purchase dry

reversions after lives or years, or such as were fit to put out money upon long returns.

I do not say, but that I think the undertakers themselves will be glad to have some captains, or men of service, intermixed among them for their safety; but I speak of the generality of undertakers, which I wish were men of estate and plenty.

Now therefore it followeth well to speak of the aforesaid three motives. For it will appear the more, how necessary it is to allure by all means undertakers: since those men will be least fit, which are like to be most in appetite of themselves; and those most fit, which are like least to desire it.

First, therefore, for pleasure: in this region or tract of soil, there are no warm winters, nor orange-trees, nor strange beasts, or birds, or other points of curiosity or pleasure, as there are in the Indies and the like: so as there can be found no foundation made upon matter of pleasure, otherwise than that the very general desire of novelty and experiment in some stirring natures may work somewhat; and therefore it is the other two points, of honour and profit, whereupon we are wholly to rest.

For honour or countenance, if I shall mention to your majesty, whether in wisdom you shall think convenient, the better to express your affection to the enterprise, and for a pledge thereof, to add the earldom of Ulster to the prince's titles, I shall but learn it out of the practice of king Edward I. who first used the like course, as a mean the better to

restrain the country of Wales: and I take it, the prince of Spain hath the addition of a province in the kingdom of Naples: and other precedents I think there are: and it is like to put more life and encouragement into the undertakers.

Also, considering the large territories which are to be planted, it is not unlike your majesty will think of raising some nobility there; which, if it be done merely upon new titles of dignity, having no manner of reference to the old; and if it be done also without putting too many portions into one hand: and lastly, if it be done without any great franchises or commands, I do not see any peril can ensue thereof. As on the other side, it is like it may draw some persons of great estate and means into the action, to the great furtherance and supply of the charges thereof.

And lastly for knighthood, to such persons as have not attained it; or otherwise knighthood, with some new difference and precedence, it may, no doubt, work with many. And if any man think, that these things which I propound, are "aliquid "nimis" for the proportion of this action, I confess plainly, that if your majesty will have it really and effectually performed, my opinion is, you cannot bestow too much sunshine upon it. For "lunæ radiis "non maturescit botrus." Thus much for honour.

For profit, it will consist in three parts:

First, The easy rates that your majesty shall be pleased to give the undertakers of the land they shall receive.

Secondly, The liberties which you may be pleased to confer upon them. When I speak of liberties, I mean not liberties of jurisdiction; as counties palatine, or the like, which it seemeth hath been the error of the ancient donations and plantations in that country, but I mean only liberties tending to commodity; as liberty to transport any of the commodities growing upon the countries new planted; liberty to import from hence all things appertaining to their necessary use, custom-free; liberty to take timber or other materials in your majesty's woods there, and the like.

The third is, ease of charge; that the whole mass of charge doth not rest upon the private purse of the undertakers.

For the two former of these, I will pass them over; because in that project, which with good diligence and providence hath been presented to your majesty by your ministers of that kingdom, they are in my opinion well handled.

For the third, I will never despair, but that the parliament of England, if it may perceive, that this action is not a flash, but a solid and settled pursuit, will give aid to a work so religious, so politic, and so profitable. And the distribution of charge, if it be observed, falleth naturally into three kinds of charge, and every of those charges respectively ought to have his proper fountain and issue. For as there proceedeth from your majesty's royal bounty and munificence, the gift of the land, and the other materials; together with the endowment of liberties;

and as the charge which is private, as building of houses, stocking of grounds, victual, and the like, is to rest upon the particular undertakers: so whatsoever is public, as building of churches, walling of towns, town-houses, bridges, causeways, or highways, and the like, ought not so properly to lie upon particular persons, but to come from the public estate of this kingdom; to which this work is like to return so great an addition of glory, strength, and commodity.

For the project itself, I shall need to speak the less, in regard it is so considerately digested already for the county of Tyrone: and therefore my labour shall be but in those things wherein I shall either add to, or dissent from that which is set down; which will include five points or articles.

First, they mention a commission for this plantation: which of all things is most necessary, both to direct, and appease controversies, and the like.

To this I add two propositions: the one, that which perhaps is meant, though not expressed, that the commissioners should for certain times reside and abide in some habitable town of Ireland, near in distance to the country where the plantation shall be; to the end, both that they may be more at hand, for the execution of the parts of their commission; and withal it is like, by drawing a concourse of people and tradesmen to such towns, it will be some help and commodity to the undertakers for things they shall stand in need of: and likewise, it will be a more safe place of receit and store, wherein to un-

lade and deposit such provisions as are after to be employed.

The second is, that your majesty would make a correspondency between the commission there, and a council of plantation here: wherein I warrant myself by the precedent of the like council of plantation for Virginia; an enterprise in my opinion differing as much from this, as Amadis de Gaul differs from Cæsar's Commentaries. But when I speak of a council of plantation, I mean some persons chosen by way of reference, upon whom the labour may rest, to prepare and report things to the council of estate here, that concern that business. For although your majesty have a grave and sufficient council in Ireland; from whom, and upon whom, the commissioners are to have assistance and dependence; yet that supplies not the purpose whereof I speak. For, considering, that upon the advertisements, as well of the commissioners, as of the council of Ireland itself, there will be many occasions to crave directions from your majesty and your privy council here, which are busied with a world of affairs; it cannot but give greater expedition, and some better perfection unto such directions and resolutions, if the matters may be considered of aforehand by such as may have a continual care of the cause. And it will be likewise a comfort and satisfaction to some principal undertakers, if they may be admitted of that council.

Secondly, There is a clause wherein the undertakers are restrained, that they shall execute the

plantation in person; from which I must dissent, if I will consent with the grounds I have already taken. For it is not probable that men of great means and plentiful estate will endure the travel, diseasements, and adventures of going thither in person: but rather, I suppose, many will undertake portions as an advancement for their younger children or kinsfolks; or for the sweetness of the expectation of a great bargain in the end, when it is overcome. And therefore, it is like they will employ sons, kinsfolks, servants, or tenants, and yet be glad to have the estate in themselves. And it may be, some again will join their purses together, and make as it were a partnership or joint-adventure; and yet man forth some one person by consent, for the executing of the plantation.

Thirdly, There is a main point, wherein I fear the project made hath too much of the line and compass, and will not be so natural and easy to execute, nor yet so politic and convenient: and that is, that the buildings should be "sparsim" upon every portion; and the castle or principal house should draw the tenements and farms about it as it were into villages, hamlets, or endships; and that there should be only four corporate towns for the artificers and tradesmen.

My opinion is, that the buildings be altogether in towns, to be compounded as well of husbandries as of arts. My reasons are,

First, When men come into a country vast, and void of all things necessary for the use of man's life.

if they set up together in a place, one of them will the better supply the wants of another: work-folks of all sorts will be the more continually on work without loss of time; when, if work fail in one place, they may have it fast by; the ways will be made more passable for carriages to those seats or towns, than they can be to a number of dispersed solitary places; and infinite other helps and easements, scarcely to be comprehended in cogitation, will ensue in vicinity and society of people: whereas if they build scattered, as is projected, every man must have a cornucopia in himself for all things he must use; which cannot but breed much difficulty and no less waste.

Secondly, it will draw out of the inhabited country of Ireland provisions and victuals, and many necessaries; because they shall be sure of utterance: whereas in the dispersed habitations, every man must reckon only upon that that he brings with him, as they do in provisions of ships.

Thirdly, the charge of bawnes, as they call them, to be made about every castle or house, may be spared, when the habitations shall be congregated only into towns.

And lastly, it will be a means to secure the country against future perils, in case of any revolt and defection: for by a slight fortification of no great charge, the danger of any attempts of kierns and sword-men may be prevented; the omission of which point, in the last plantation of Munster, made the work of years to be but the spoil of days. And

if any man think it will draw people too far off from the grounds they are to labour, it is to be understood, that the number of the towns be increased accordingly; and likewise, the situation of them be as in the centre, in respect of the portions assigned to them: for in the champaign countries of England, where the habitation useth to be in towns, and not dispersed, it is no new thing to go two miles off to plough part of their grounds; and two miles compass will take up a good deal of country.

The fourth point, is a point wherein I shall differ from the project rather in quantity and proportion, than in matter. There is allowed to the undertaker, within the five years of restraint, to alien a third part in fee farm, and to demise another third for forty years: which I fear will mangle the portions, and will be but a shift to make money of two parts; whereas, I am of opinion, the more the first undertaker is forced to keep in his own hands, the more the work is like to prosper. For first, the person liable to the state here to perform the plantation, is the immediate undertaker. Secondly, the more his profit dependeth upon the annual and springing commodity, the more sweetness he will find in putting forward manurance and husbanding of the grounds, and therefore is like to take more care of it. Thirdly, since the natives are excluded, I do not see that any persons are like to be drawn over of that condition, as are like to give fines, and undertake the charge of building. For I am persuaded, that the people transported will consist of gentlemen and

their servants, and of labourers and hinds, and not of yeomen of any wealth. And therefore the charge of buildings, as well of the tenements and farms, as of the capital houses themselves, is like to rest upon the principal undertakers. Which will be recompensed in the end to the full, and with much advantage, if they make no long estates or leases. And therefore this article to receive some qualification.

Fifthly, I should think it requisite that men of experience in that kingdom should enter into some particular consideration of the charges and provisions of all kinds, that will be incident to the plantation; to the end, that thereupon some advice may be taken for the furnishing and accommodating them most conveniently, aiding private industry and charge with public care and order.

Thus I have expressed to your majesty those simple and weak cogitations, which I have had in myself touching this cause, wherein I most humbly desire your pardon, and gracious acceptance of my good affection and intention. For I hold it for a rule, that there belongeth to great monarchs, from faithful servants, not only the tribute of duty, but the oblations of cheerfulness of heart. And so I pray the Almighty to bless this great action, with your majesty's care; and your care with happy success.

A LETTER TO MR. SECRETARY CECIL,

AFTER THE * DEFEATING OF THE SPANISH FORCES IN IRELAND; INCITING HIM TO EMBRACE THE CARE OF REDUCING THAT KINGDOM TO CIVILITY, WITH SOME REASONS SENT INCLOSED.

It may please your honour,

As one that wisheth you all increase of honour; and as one that cannot leave to love the state, what interest soever I have, or may come to have in it; and as one that now this dead vacation time hath some leisure "ad aliud agendum;" I will presume to propound unto you that which though you cannot but see, yet I know not whether you apprehend and esteem it in so high a degree; that is, for the best action of importation to yourself, of sound honour and merit to her majesty and this crown, without ventosity and popularity, that the riches of any occasion, or the tide of any opportunity, can possibly minister or offer: and that is the causes of Ireland, if they be taken by the right handle. For if the wound be not ripped up again, and come to a recrudency by new foreign succours, I think that no physician will go on much with letting of blood, "in declinatione morbi;" but will intend to purge and corroborate. To which purpose I send you mine opinion, without labour of words, in the inclosed; and sure I am, that if you shall enter into the matter according to the vivacity of your spirit, nothing can make unto

* Therefore this was wr

return. For you shall make the queen's felicity complete, which now, as it is, is incomparable: and for yourself, you shall shew yourself as good a patriot as you are thought a politic, and make the world perceive you have not less generous ends, than dextrous delivery of yourself towards your ends; and that you have as well true arts and grounds of government, as the facility and felicity of practice and negociation; and that you are as well seen in the periods and tides of estates, as in your own circle and way: than the which, I suppose, nothing can be a better addition and accumulation of honour unto you. This, I hope, I may in privateness write, either as a kinsman, that may be bold: or as a scholar, that hath liberty of discourse, without committing any absurdity. But if it seem any error in me thus to intromit myself, I pray your honour to believe, I ever loved her majesty and the state, and now love yourself; and there is never any vehement love without some absurdity, as the Spaniard well says: "desuario con la calentura." So desiring your honour's pardon, I ever continue.

CONSIDERATIONS TOUCHING THE QUEEN'S SERVICE IN IRELAND. *

THE reduction of that country, as well to civility and justice, as to obedience and peace, which things, as affairs now stand, I hold to be inseparable, consisteth in four points:

1. The extinguishing of the relicks of the war.

* Resuscitatio, 264.

2. The recovery of the hearts of the people.
3. The removing of the root and occasions of new troubles.
4. Plantations and buildings.

For the first; concerning the places and times, and particularities of farther prosecution, in fact, I leave it to the opinion of men of war; only the difficulty is, to distinguish and discern the propositions, which shall be according to the ends of the state here, that is, final and summary towards the extirpation of the troubles, from those, which though they pretend public ends, yet may refer indeed to the more private and compendious ends of the council there: or of the particular governors or captains. But still, as I touched in my letter, I do think much letting blood, "in declinatione morbi," is against method of cure: and that it will but induce necessity, and exasperate despair: and percase discover the hollowness of that which is done already, which now blazeth to the best shew. For Iaglia's and proscriptions of two or three of the principal rebels, they are no doubt, "jure gentium," lawful: in Italy usually practised upon the banditti; best in season when a side goeth down: and may do good in two kinds; the one, if they take effect: the other, in the distrust which may follow amongst the rebels themselves. But of all other points, to my understanding, the most effectual is, the well expressing or impressing the design of this state, upon that miserable and desolate kingdom; containing the same between these two lists or boundaries; the one, that the queen seeketh not an extirpation of that people,

but a reduction; and that, now she hath chastised them by her royal power and arms, according to the necessity of the occasion, her majesty taketh no pleasure in effusion of blood, or displanting of ancient generations. The other, that her majesty's princely care is principally and intentionally bent upon the action of Ireland; and that she seeketh not so much the ease of charge, as the royal performance of the office of protection, and reclaim of those her subjects: and in a word, that the case is altered so far as may stand with the honour of the time past: which it is easy to reconcile, as in my last note I shewed. And again, I do repeat, that if her majesty's design be "ex professo" to reduce wild and barbarous people to civility and justice, as well as to reduce rebels to obedience, it makes weakness turn Christianity, and conditions graces; and so hath a fineness in turning utility upon point of honour, which is agreeable to the humour of these times. And besides, if her majesty shall suddenly abate the lists of her forces, and shall do nothing to countervail it in point of reputation, of a politic proceeding, I doubt things may too soon fall back into the state they were in. Next to this; adding reputation to the cause, by imprinting an opinion of her majesty's care and intention upon this action, is the taking away of reputation from the contrary side, by cutting off the opinion and expectation of foreign succours; to which purpose this enterprise of Algiers, if it hold according to the advertisement, and if it be not wrapped up in the period of this summer,

seemeth to be an opportunity "cœlitus demissa." And to the same purpose nothing can be more fit than a treaty, or a shadow of a treaty of a peace with Spain, which methinks should be in our power to fasten at least "rumore tenus," to the deluding of as wise people as the Irish. Lastly, for this point; that which the ancients called "potestas facta rede-"undi ad sanitatem;" and which is but a mockery when the enemy is strong, or proud, but effectual in his declination; that is, a liberal proclamation of grace and pardon to such as shall submit, and come in within a time prefixed, and of some farther reward to such as shall bring others in; that one's sword may be sharpened by another's, is a matter of good experience, and now, I think, will come in time. And percase, though I wish the exclusions of such a pardon exceeding few, yet it will not be safe to continue some of them in their strength, but to translate them and their generations into England; and give them recompence and satisfaction here for their possessions there, as the king of Spain did, by divers families of Portugal. To the effecting of all the points aforesaid, and likewise those which fall within the divisions following, nothing can be in priority, either time or matter, better than the sending of some commission of countenance, "ad res inspicien-"das et componendas;" for it will be a very significant demonstration of her majesty's care of that kingdom; a credence to any that shall come in and submit; a bridle to any that shall have their fortunes there, and shall apply their propositions to private

ends; and an evidence that her majesty, after arms laid down, speedily pursueth a politic course, without neglect or respiration: and it hath been the wisdom of the best examples of government.

Towards the recovery of the hearts of the people, there be but three things, "in natura rerum."

1. Religion.
2. Justice and protection.
3. Obligation and reward.

For religion, to speak first of piety, and then of policy, all divines do agree, that if consciences be to be enforced at all, wherein yet they differ, two things must precede their inforcement; the one, means of instruction; the other, time of operation; neither of which they have yet had. Besides, till they be more like reasonable men than they yet are, their society were rather scandalous to the true religion, than otherwise; as pearls cast before swine: for till they be cleansed from their blood, incontinency, and theft, which are now not the lapses of particular persons, but the very laws of the nation, they are incompatible with religion reformed. For policy, there is no doubt but to wrestle with them now, is directly opposite to their reclaiming, and cannot but continue their alienation of mind from this government. Besides, one of the principal pretences, whereby the heads of the rebellion have prevailed both with the people, and with the foreigner, hath been the defence of the catholic religion: and it is this that likewise hath made the foreigner reciprocally more plausible with the rebel. Therefore a toleration of religion,

for a time, not definite, except it be in some principal towns and precincts, after the manner of some French edicts, seemeth to me to be a matter warrantable by religion, and in policy of absolute necessity. And the hesitation in this point, I think, hath been a great casting back of the affairs there. Neither if any English papist or recusant shall, for liberty of his conscience, transfer his person, family, and fortunes thither; do I hold it a matter of danger, but expedient to draw on undertaking, and to further population. Neither if Rome will cozen itself, by conceiving it may be in some degree to the like toleration in England, do I hold it a matter of any moment; but rather a good mean to take off the fierceness and eagerness of the humour of Rome, and to stay further excommunications or interdictions for Ireland. But there would go hand in hand with this, some course of advancing religion indeed, where the people is capable thereof; as the sending over some good preachers, especially of that sort which are vehement and zealous persuaders, and not scholastical, to be resident in principal towns; endowing them with some stipends out of her majesty's revenues, as her majesty hath most religiously and graciously done in Lancashire: and the recontinuing and replenishing the college begun at Dublin, the placing of good men to be bishops in the sees there, and the taking care of the versions of bibles and catechisms, and other books of instruction, into the Irish language; and the like religious courses, both for the honour of God, and for the

avoiding of scandal and insatisfaction here, by the show of a toleration of religion in some parts there.

For justice; the barbarism and desolation of the country considered, it is not possible they should find any sweetness at all of justice: if it should be, which hath been the error of times past, formal, and fetched far off from the state; because it will require running up and down from process; and give occasion for polling and exactions by fees, and many other delays and charges. And therefore there must be an interim in which the justice must be only summary: the rather, because it is fit and safe for a time the country do participate of martial government; and therefore, I could wish in every principal town or place of habitation, there were a captain or governor; and a judge, such as recorders, and learned stewards are here in corporations, who may have a prerogative commission to hear and determine "secundum sanam "discretionem;" and as near as may be to the laws and customs of England; and that by bill or plaint, without original writ; reserving from their sentence matter of freehold and inheritance, to be determined by a superior judge itinerant; and both sentences, as well of the bailywick judge, as itinerant, to be reversed, if cause be, before the council of the province to be established there with fit instructions.

For obligation and reward; it is true, no doubt, which was anciently said, that a state is contained in two words, "præmium" and "pœna; and I am persuaded, if a penny in the pound which hath been spent in "pœna," for this kind of war is but "pœna,"

a chastisement of rebels, without fruit or emolument to this state, had been spent in "præmio," that is, in rewarding, things had never grown to this extremity. But to speak forwards. The keeping of the principal Irish persons in terms of contentment, and without cause of particular complaint; and generally the carrying of an even course between the English and Irish; whether it be in competition or whether it be in controversy, as if they were one nation, without that same partial course which hath been held by the governors and counsellors there, that some have favoured the Irish, and some contrary, is one of the best medicines of that state. And as for other points of contentment, as the countenancing of their nobility as well in this court as there; the imparting of knighthood; the care of education of their children, and the like points of comfort and allurement; they are things which fall into every man's consideration.

For the extirpating of the seeds of troubles, I suppose the main roots are but three. The first, the ambition and absoluteness of the chief of the families and septs. The second, the licentious idleness of their kernes and soldiers, that lie upon the country, by cesses and such like oppressions. And the third, the barbarous laws, customs, their brehon laws, habits of apparel, their poets or heralds that enchant them in savage manners, and sundry other such dregs of barbarism and rebellion, which by a number of politic statutes of Ireland, meet to be put in execution, are already forbidden; unto which such

additions may be made as the present time requireth. But the deducing of this branch requireth a more particular notice of the state and manners there, than falls within my compass.

For plantations and buildings, I do find it strange that in the last plot for the population of Munster, there were limitations how much in demesne, and how much in farm, and how much in tenancy; again, how many buildings should be erected, how many Irish in mixture should be admitted, and other things foreseen almost to curiosity: but no restraint that they might not build "sparsim" at their pleasure; nor any condition that they should make places fortified and defensible: which omission was a strange neglect and secureness, to my understanding. So as for this last point of plantations and buildings, there be two considerations which I hold most material; the one for quickening, and the other for assuring. The first is, that choice be made of such persons for the government of towns and places, and such undertakers be procured, as be men gracious and well beloved, and are like to be well followed. Wherein for Munster, it may be, because it is not "res integra;" but that the former undertakers stand interested, there will be some difficulty: but surely, in mine opinion, either by agreeing with them; or by over-ruling them with a parliament in Ireland, which in this course of a politic proceeding, infinite occasions will require speedily to be held, it will be fit to supply fit qualified persons or undertakers. The other, that

it be not left, as heretofore, to the pleasure of the undertakers and adventurers, where and how to build and plant; but that they do it according to a prescript or formulary. For first, the places, both maritime and inland, which are fittest for colonies or garrisons, as well for doubt of the foreigner, as for keeping the country in bridle, would be found, surveyed, and resolved upon: and then that the patentees be tied to build in those places only, and to fortify as shall be thought convenient. And lastly, it followeth of course, in countries of new populations, to invite and provoke inhabitants by ample liberties and charters.

TO SIR GEORGE VILLIERS.

SIR,

I SEND you inclosed a warrant for my lady of Somerset's pardon, reformed in that main and material point, of inserting a clause [that she was not a principal, but an accessary before the fact, by the instigation of base persons.] Her friends think long to have it dispatched, which I marvel not at, for that in matter of life moments are numbered.

I do more and more take contentment in his majesty's choice of Sir Oliver St. John, for his deputy of Ireland, finding, upon divers conferences with him, his great sufficiency; and I hope the good intelligence, which he purposeth to hold with me by advertisements from time to time, shall work a good effect for his majesty's service.

I am wonderful desirous to see that kingdom flourish, because it is the proper work and glory of his majesty and his times. And his majesty may be pleased to call to mind, that a good while since, when the great rent and divisions were in the parliament of Ireland, I was no unfortunate remembrancer to his majesty's princely wisdom in that business. God ever keep you and prosper you.

Your true and most devoted
and bounden servant,

FR. BACON.

1 July, 1616.*

TO SIR GEORGE VILLIERS.

SIR,

I THINK I cannot do better service towards the good estate of the kingdom of Ireland than to procure the king to be well served in the eminent places of law and justice; I shall therefore name unto you for the attorney's place there, or for the solicitor's place, if the new solicitor shall go up, a gentleman of mine own breeding and framing, Mr. Edward Wyrthington of Gray's-Inn; he is born to eight hundred pounds a year; he is the eldest son of a most severe justicer, amongst the recusants of Lancashire, and a man most able for law and speech, and by me trained in the king's causes. My lord deputy, by my description, is much in love with

* Stephens's Second Collection, p. 3.

the man. I hear my Lord of Canterbury, and Sir Thomas Laque, should name one Sir John Beare, and some other mean men. This man I commend upon my credit, for the good of his majesty's service. God ever preserve and prosper you. I rest

Your most devoted
and most bounden servant,

FR. BACON.

2 July, 1616.*

TO SIR GEORGE VILLIERS, ABOUT IRISH AFFAIRS.

SIR.

BECAUSE I am uncertain whether his majesty will put to a point some resolutions touching Ireland, now at Windsor; I thought it my duty to attend his majesty by my letter, and thereby to supply my absence, for the renewing of some former commissions for Ireland, and the framing of a new commission for the wards and the alienations, which appertain properly to me as his majesty's attorney, and have been accordingly referred by the lords. I will undertake that they are prepared with a greater care, and better application to his majesty's service in that kingdom, than heretofore they have been; and therefore of that I say no more. And for the instructions of the new deputy, they have been set down by the two secretaries, and read to the board; and being things of an ordinary nature, I do not see but they may pass.

* Stephens's Second Collection, p. 5.

But there have been three propositions and counsels which have been stirred, which seem to me of very great importance; wherein I think myself bound to deliver to his majesty my advice and opinion, if they should now come in question.

The first is, touching the recusant magistrates of the towns of Ireland, and the commonalties themselves their electors, what shall be done? Which consultation ariseth from the late advertisements of the two lords justices, upon the instance of the two towns, Limerick and Kilkenny; in which advertisements they represent the danger only, without giving any light for the remedy; rather warily for themselves, than agreeably to their duties and places.

In this point I humbly pray his majesty to remember, that the refusal is not of the oath of allegiance, which is not enacted in Ireland, but of the oath of supremacy, which cutteth deeper into matter of conscience. Also, that his majesty will, out of the depth of his excellent wisdom and providence, think, and, as it were, calculate with himself, whether time will make more for the cause of religion in Ireland, and be still more and more propitious; or whether deferring remedies will not make the case more difficult. For if time give his majesty advantage, what needeth precipitation to extreme remedies? But if time will make the case more desperate, then his majesty cannot begin too soon. Now, in my opinion, time will open and facilitate things for reformation of religion there, and not shut

up and lock out the same. For, first, the plantations going on, and being principally of protestants, cannot but mate the other party in time; also his majesty's care in placing good bishops and divines, in amplifying the college there, and in looking to the education of wards and the like; as they are the most natural means, so are they like to be the most effectual and happy for the weeding out of popery, without using the temporal sword; so that, I think, I may truly conclude, that the ripeness of time is not yet come.

Therefore my advice in all humbleness is, that this hazardous course of proceeding, to tender the oath to the magistrates of towns, proceed not, but die by degrees. And yet, to preserve the authority and reputation of the former council, I would have somewhat done; which is, that there be a proceeding to seizure of liberties; but not by any act of power, but by "Quo warranto," or "Scire facias;" which is a legal course; and will be the work of three or four terms; by which time the matter will somewhat cool.

But I would not, in any case, that the proceeding should be with both the towns, which stand now in contempt, but with one of them only, choosing that which shall be thought most fit. For if his majesty proceed with both, then all the towns that are in the like case will think it a common cause; and that it is but their case to day, and their own to-morrow. But if his majesty proceed with one, the apprehension and terror will not be so strong; for they

will think it may be their case as well to be spared as prosecuted: and this is the best advice that I can give to his majesty in this strait; and of this opinion seemed my lord chancellor to be.

The second proposition is this: It may be his majesty will be moved to reduce the number of his council of Ireland, which is now almost fifty, to twenty, or the like number; in respect the greatness of the number doth both embase the authority of the council, and divulge the business. Nevertheless, I do hold this proposition to be rather specious and solemn, than needful at this time; for certainly it will fill the state full of discontentment; which in a growing and unsettled estate ought not to be.

This I could wish; that his majesty would appoint a select number of counsellors there, which might deal in the improvement of his revenue, being a thing not fit to pass through too many hands, and that the said selected number should have days of sitting by themselves, at which the rest of the council should not be present; which being once settled, then other principal business of state may be handled at those sittings, and so the rest begin to be disused, and yet retain their countenance without murmur or disgrace.

The third proposition, as it is wound up, seemeth to be pretty, if it can keep promise; for it is this, that a means may be found to reinforce his majesty's army there by 500 or 1000 men; and that without any penny increase of charge. And the means

should be, that there should be a commandment of a local removing, and transferring some companies from one province to another; whereupon it is supposed, that many that are planted in house and lands, will rather lose their entertainment, than remove; and thereby new men may have their pay, and yet the old be mingled in the country for the strength thereof.

In this proposition two things may be feared; the one, discontent of those that shall be put off; the other, that the companies shall be stuffed with "Tirones," instead of "Veterani." I wish therefore that this proposition be well debated ere it be admitted. Thus having performed that which duty binds me to do, I commend you to God's best preservation,

Your most devoted and bounden servant,

FR. BACON.

Gorhambury, July 5, 1616.*

* Stephens's Second Collection, p. 5.

TRACTS

RELATING TO SPAIN.

A REPORT

MADE BY

SIR FRANCIS BACON, KNIGHT,

IN THE HOUSE OF COMMONS,

OF A SPEECH DELIVERED BY THE EARL OF SALISBURY; AND ANOTHER SPEECH DELIVERED BY THE EARL OF NORTHAMPTON, AT A CONFERENCE CONCERNING THE PETITION OF THE MERCHANTS UPON THE SPANISH GRIEVANCES.

Parliament 5 Jacobi.

And it please you, Mr. Speaker, I do not find myself any ways bound to report that which passed at the last conference touching the Spanish grieveances, having been neither employed to speak, nor appointed to report in that cause. But because it is put upon me by a silent expectation, grounded upon nothing, that I know, more than that I was observed diligently to take notes; I am content, if that provision which I made for mine own remembrance may serve this house for a report, not to deny you that sheaf that I have in haste bound up. It is true, that one of his majesty's principal counsellors in causes of estate did use a speech that contained a world of matter; but how I shall be able to make a globe of that world, therein I fear mine own strength.

His lordship took the occasion of this, which

I shall now report, upon the answer which was by us made to the amendments propounded upon the bill of hostile laws; quitting that business with these few words; that he would discharge our expectation of reply, because their lordships had no warrant to dispute. Then continuing his speech, he fell into this other cause, and said; that being now to make answer to a proposition of ours, as we had done to one of theirs, he wished it could be passed over with like brevity. But he did foresee his way, that it would prove not only long, but likewise hard to find, and hard to keep; this cause being so to be carried, as above all no wrong be done to the king's sovereignty and authority: and in the second place, no misunderstanding do ensue between the two houses. And therefore that he hoped his words should receive a benign interpretation; knowing well that pursuit and drift of speech, and multitude of matter, might breed words to pass from him beyond the compass of his intention; and therefore he placed more assurance and caution in the innocency of his own meaning, and in the experience of our favours, than in any his wariness or watchfulness over his own speech.

This respective preface used, his lordship descended to the matter itself, which he divided into three considerations: for he said he would consider of the petition.

First, As it proceeded from the merchants.

Secondly, As from them it was offered to the lower house.

And thirdly, As from the lower house it was recommended to the higher house.

In the first of these considerations there fell out naturally a subdivision into the persons of the petitioners, and the matter and parts of the petition. In the persons of the merchants his lordship made, as I have collected them in number, eight observations, whereof the three first respected the general condition of merchants; and the five following were applied to the particular circumstances of the merchants now complaining.

His lordship's first general observation was, that merchants were of two sorts; the one sought their fortunes, as the verse saith, "per saxa, per ignes;" and, as it is said in the same place, "extremos currit "mercator ad Indos;" subjecting themselves to weather and tempest; to absence, and, as it were, exile, out of their native countries; to arrest in entrances of war; to foreign injustice and rigour in times of peace; and many other sufferances and adventures. But that there were others that took a more safe, but a less generous course in raising their fortunes. He taxed none, but did attribute much more respect to the former.

The second general observation which his lordship made was, that the complaints of merchants were usually subject to much error, in regard that they spake, for the most part, but upon information; and that carried through many hands; and of matters done in remote parts; so as a false or factious factor might oftentimes make great trage-

dies upon no great ground. Whereof, towards the end of his speech he brought an instance of one trading into the Levant, that complained of an arrest of his ship, and possessed the council-table with the same complaint in a vehement and bitter fashion; desiring and pressing some present and expostulatory letters touching the same. Whereupon some counsellors, well acquainted with the likg heats, and forwardness in complaints, happened to say to him out of conjecture, and not out of any intelligence, "What will you say if your ship, which you com- "plain to be under arrest, be now under sail in "way homewards?" Which fell out accordingly: the same person confessing, six days after, to the lords, that she was indeed in her way homewards.

The third general observation which his lordship made was this, in effect; that although he granted that the wealth and welfare of the merchant was not without a sympathy with the general stock and state of a nation, especially an island; yet nevertheless, it was a thing too familiar with the merchant, to make the case of his particular profit, the public case of the kingdom.

There follow the particular observations, which have a reference and application to the merchants that trade to Spain and the Levant; wherein his lordship did first honourably and tenderly acknowledge, that their grievances were great, that they did multiply, and that they do deserve compassion and help; but yet nevertheless, that he must use that loving plainness to them as to tell them that

in many things they were authors of their own miseries. For since the dissolving of the company, which was termed the monopoly, and was set free by the special instance of this house, there hath followed such a confusion and relaxation in order and government amongst them, as they do not only incur many inconveniences, and commit many errors, but in the pursuits of their own remedies and suits they do it so impoliticly, and after such a fashion, as, except lieger ambassadors, which are the eyes of kings in foreign parts, should leave their centinel, and become merchants' factors, and solicitors, their causes can hardly prosper. And, which is more, such is now the confusion in the trade, as shop-keepers and handy-craftsmen become merchants there; who being bound to no orders, seek base means, by gifts and bribery, to procure favours at the hands of officers there. So as the honest merchant, that trades like a substantial merchant, and loves not to take servile courses to buy the right due to him by the amity of the princes, can have no justice without treading in their steps.

Secondly, His lordship did observe some improbability that the wrongs should be so great, considering trading into those parts was never greater; whereas if the wrongs and griefs were so intolerable and continual, as they propound them and voiced them, it would work rather a general discouragement and coldness of trade in fact, than an earnest and hot complaint in words.

Thirdly, His lordship did observe, that it is a

course, howsoever it may be with a good intent, yet, of no small presumption, for merchants upon their particular grievances to urge things tending to a direct war, considering that nothing is more usual in treaties, than that such particular damages and molestations of subjects are left to a form of justice to be righted: and that the more high articles do retain nevertheless their vigour inviolably; and that the great bargain of the kingdom for war and peace may in no wise depend upon such petty forfeitures, no more than in common assurance between man and man it were fit that, upon every breach of covenants, there should be limited a re-entry.

Fourthly, His lordship did observe, in the manner of preferring their petition, they had inverted due order, addressing themselves to the foot, and not to the head. For, considering that they prayed no new law for their relief, and that it concerned matter of inducement to war or peace, they ought to have begun with his majesty; unto whose royal judgment, power, and office, did properly belong the discerning of that which was desired, the putting in act of that which might be granted, and the thanks for that which might be obtained.

Fifthly, His lordship did observe, that as they had not preferred their petition as it should be, so they had not pursued their own direction as it was. For having directed their petition to the king, the lords spiritual and temporal, and the commons in parliament assembled, it imported, as if they had offered the like petition to the lords; which they

never did: contrary not only to their own direction, but likewise to our conceit, who pre-supposed, as it should seem by some speech that passed from us at a former conference, that they had offered several petitions of like tenor to both houses. So have you now those eight observations, part general, part special, which his lordship made touching the persons of those which exhibited the petition, and the circumstances of the same.

For the matter of the petition itself, his lordship made this division, that it consisteth of three parts.

First, Of the complaints of wrongs in fact.

Secondly, Of the complaints of wrongs in law, as they may be truly termed, that is, of the inequality of laws which do regulate the trade.

And thirdly, The remedy desired by letters of mart.

The wrongs in fact receive a local distribution of three. In the trade to Spain, in the trade to the West-Indies, and in the trade to the Levant.

Concerning the trade to Spain; although his lordship did use much signification of compassion of the injuries which the merchants received; and attributed so much to their profession and estate, as from such a mouth in such a presence they ought to receive for a great deal of honour and comfort, which kind of demonstration he did interlace throughout his whole speech, as proceeding "ex abundantia "cordis," yet nevertheless he did remember four excusations, or rather extenuations of those wrongs.

The first was, that the injustices complained of were not in the highest degree, because they were

delays and hard proceedings, and not inique sentences, or definitive condemnations: wherein I called to mind what I heard a great bishop say, that courts of justice, though they did not turn justice into wormwood by corruption, yet they turned it into vinegar by delays, which soured it. Such a difference did his lordship make, which, no question, is a difference "secundum majus et minus."

Secondly, His lordship ascribed these delays, not so much to malice or alienation of mind towards us, as to the nature of the people and nation, which is proud and therefore dilatory: for all proud men are full of delays, and must be waited on; and especially to the multitudes and diversities of tribunals and places of justice, and the number of the king's councils, full of referrings, which ever prove of necessity to be deferrings; besides the great distance of territories: all which have made the delays of Spain to come into a by-word through the world. Wherein I think his lordship might allude to the proverb of Italy, "Mi venga la morte di Spagna," Let my death come from Spain, for then it is sure to be long a coming.

Thirdly, His lordship did use an extenuation of these wrongs, drawn from the nature of man, "nemo "subito fingitur." For that we must make an account, that though the fire of enmity be out between Spain and us, yet it vapoureth: the utter extincting whereof must be the work of time.

But lastly, his lordship did fall upon that extenuation, which of all the rest was most forcible:

which was, that many of these wrongs were not sustained without some aspersion of the merchants' own fault in ministering the occasion, which grew chiefly in this manner.

There is contained an article in the treaty between Spain and us, that be shall not transport any native commodities of the Low Countries into Spain; nay, more, that we shall not transport any opificia, manufactures of the same countries: so that if an English cloth take but a dye in the Low Countries, it may not be transported by the English. And the reason is, because even those manufactures, although the materials come from other places, do yield unto them a profit and sustentation, in regard their people are set on work by them; they have a gain likewise in the price; and they have a custom in the transporting. All which the policy of Spain is to debar them of; being no less desirous to suffocate the trade of the Low Countries, than to reduce their obedience. This article the English merchant either doth not or will not understand: but being drawn with his threefold cord of love, hate, and gain, they do venture to transport the Low Country commodities of these natures, and so draw upon themselves these arrests and troubles.

For the trade to the Indies, his lordship did discover unto us the state of it to be thus: the policy of Spain doth keep that treasury of theirs under such lock and key, as both confederates, yea, and subjects, are excluded of trade into those countries; insomuch as the French king, who hath

reason to stand upon equal terms with Spain, yet nevertheless is by express capitulation debarred. The subjects of Portugal, whom the state of Spain hath studied by all means to content, are likewise debarred: such a vigilant dragon is there that keepeth this golden fleece; yet nevertheless, such was his majesty's magnanimity in the debate and conclusion of the last treaty, as he would never condescend to any article, importing the exclusion of his subjects from that trade: as a prince that would not acknowledge that any such right could grow to the crown of Spain by the donative of the pope, whose authority he disclaimeth; or by the title of a dispersed and punctual occupation of certain territories in the name of the rest; but stood firm to reserve that point in full question to farther times and occasions; so as it is left by the treaty in suspence, neither debarred nor permitted: the tenderness and point of honour whereof was such, as they that went thither must run their own peril. Nay, farther his lordship affirmed, that if yet at this time his majesty would descend to a course of intreaty for the release of the arrests in those parts, and so confess an exclusion, and quit the point of honour, his majesty might have them forthwith released. And yet his lordship added, that the offences and scandals of some had made this point worse than it was, in regard that this very last voyage to Virginia, intended for trade and plantation, where the Spaniard hath no people nor possession, is already become infamed for piracy. Witness Bingley, who first

insinuating his purpose to be an actor in that worthy action of enlarging trade and plantation, is become a pirate, and hath been so pursued, as his ship is taken in Ireland, though his person is not yet in hold.

For the trade to the Levant, his Lordship opened unto us that the complaint consisted in effect but of two particulars: the one touching the arrest of a ship called the Trial, in Sicily; the other of a ship called the Vineyard, in Sardinia. The first of which arrests was upon pretence of piracy; the second, upon pretence of carrying ordnance and powder to the Turk. That process concerning the Trial had been at the merchants' instance drawn to a review in Spain, which is a favour of exceeding rare precedent, being directly against the liberties and privileges of Sicily. That of the Vineyard, notwithstanding it be of that nature, as, if it should be true, tendeth to the great dishonour of our nation, whereof hold hath been already taken by the French ambassador residing at Constantinople, who entered into a scandalous expostulation with his majesty's ambassador there, upon that and the like transportations of munition to the Turk, yet nevertheless there is an answer given, by letters from the king's ambassador lieger in Spain, that there shall be some course taken to give reasonable contentment in that cause, as far as may be: in both which ships, to speak truly, the greatest mass of loss may be included; for the rest are mean, in respect of the value of those two vessels.

And thus much his lordship's speech comprehended concerning the wrongs in fact.

Concerning the wrongs in law; that is to say, the rigour of the Spanish laws extended upon his majesty's subjects that traffic thither, his lordship gave this answer. That they were no new statutes or edicts devised for our people, or our times; but were the ancient laws of that kingdom: "Suus "cuique mos." And therefore, as travellers must endure the extremities of the climate, and temper of the air where they travel; so merchants must bear with the extremities of the laws, and temper of the estate where they trade. Whereunto his lordship added, That our own laws here in England were not exempted from the like complaints in foreign parts; especially in point of marine causes and depredations, and that same swift alteration of property, which is claimed by the admiralty in case of goods taken in pirates' hands. But yet that we were to understand thus much of the king of Spain's care and regard of our nation; that he had written his letters to all corregidors, officers of ports, and other his ministers, declaring his will and pleasure to have his majesty's subjects used with all freedom and favour; and with this addition, that they should have more favour, when it might be shewed, than any other. Which words, howsoever the effects prove, are not suddenly to be requited with peremptory resolutions, till time declare the direct issue.

For the third part of the matter of the petition,

which was the remedy sought by letters of mart, his lordship seemed desirous to make us capable of the inconvenience of that which was desired, by setting before us two notable exceptions thereunto: the one, that the remedy was utterly incompetent and vain; the other, that it was dangerous and pernicious to our merchants, and in consequence to the whole state.

For the weakness of the remedy, his lordship wished us to enter into consideration what the remedy was, which the statute of Henry the fifth, which was now sought to be put in execution, gave in this case: which was thus; That the party grieved should first complain to the keeper of the privy seal, and from him should take letters unto the party that had committed the spoil, for restitution; and in default of restitution to be made upon such letters served, then to obtain of the chancellor letters of mart or reprisal: which circuit of remedy promised nothing but endless and fruitless delay, in regard that the first degree prescribed was never likely to be effected: it being so wild a chace, as to serve process upon the wrong doer in foreign parts. Wherefore his lordship said, that it must be the remedy of state, and not the remedy of statute, that must do good in this case; which useth to proceed by certificates, attestations, and other means of information; not depending upon a privy seal to be served upon the party, whom haply they must seek out in the West-Indies.

For the danger of the remedy, his lordship

directed our considerations to take notice of the proportions of the merchants' goods in either kingdom: as that the stock of goods of the Spaniard, which is within his majesty's power and distress, is a trifle; whereas the stock of English goods in Spain is a mass of mighty value. So as if this course of letters of mart should be taken to satisfy a few hot pursuitors here, all the goods of the English subjects in Spain shall be exposed to seizure and arrest: and we have little or nothing in our hands on this side to mend ourselves upon. And thus much, Mr. Speaker, is that which I have collected out of that excellent speech, concerning the first main part, which was the consideration of the petition as it proceeded from the merchant.

There followeth now the second part, considering the petition as it was offered in this house. Wherein his lordship, after an affectionate commemoration of the gravity, capacity, and duty, which he generally found in the proceedings of this house, desired us nevertheless to consider with him, how it was possible that the entertaining petitions concerning private injuries, and of this nature, could avoid these three inconveniences: the first, of injustice; the second, of derogation from his majesty's supreme and absolute power of concluding war or peace; and the third, of some prejudice in reason of estate.

For injustice, it is plain, and cannot be denied, that we hear but the one part: whereas the rule, "Audi alteram partem," is not of the formality, but of the essence of justice: which is therefore figured

with both eyes shut, and both ears open; because she should hear both sides, and respect neither. So that if we should hap to give a right judgment, it might be "justum," but not "juste," without hearing both parties.

For the point of derogation, his lordship said, he knew well we were no less ready to acknowledge than himself, that the crown of England was ever invested, amongst other prerogatives not disputable, of an absolute determination and power of concluding and making war and peace: which that it was no new dotation, but of an ancient foundation in the crown, he would recite unto us a number of precedents in the reigns of several kings, and chiefly of those kings which come nearest his majesty's own worthiness; wherein he said, that he would not put his credit upon cyphers and dates; because it was easy to mistake the year of a reign, or number of a roll, but he would avouch them in substance to be perfect and true, as they are taken out of the records. By which precedents it will appear, that petitions made in parliament to kings of this realm, his majesty's progenitors, intermeddling with matter of war or peace, or inducement thereunto, received small allowance or success, but were always put off with dilatory answers; sometimes referring the matter to their council, sometimes to their letters, sometimes to their farther pleasure and advice, and such other forms; expressing plainly, that the kings meant to reserve matter of that nature entirely to their own power and pleasure.

In the eighteenth year of king Edward I. complaint was made by the commons, against the subjects of the earl of Flanders, with petition of redress. The king's answer was, "Rex nihil aliud potest, "quam eodem modo petere:" that is, That the king could do no more but make request to the earl of Flanders, as request had been made to him; and yet nobody will imagine but king Edward the first was potent enough to have had his reason of a count of Flanders by a war; and yet his answer was, "Nihil aliud potest;" as giving them to understand, that the entering into a war was a matter transcendent, that must not depend upon such controversies.

In the fourteenth year of king Edward III. the commons petitioned, that the king would enter into certain covenants and capitulations with the duke of Brabant; in which petition there was also inserted somewhat touching a money matter. The king's answer was, That for that which concerned the monies, they might handle it and examine it; but touching the peace, he would do as to himself seemed good.

In the eighteenth year of king Edward III. the commons petitioned, that they might have the trial and proceeding with certain merchants strangers as enemies to the state. The king's answer was, It should remain as it did till the king had taken farther order.

In the forty-fifth year of king Edward III. the commons complained that their trade with the

Easterlings was not upon equal terms, which is one of the points insisted upon in the present petition, and prayed an alteration and reducement. The king's answer was, It shall be so as occasion shall require.

In the fiftieth year of the same king, the commons petitioned to the king for remedy against the subjects of Spain, as they now do. The king's answer was, That he would write his letter for remedy. Here is letters of request, no letters of mart: "Nihil potest nisi eodem modo petere."

In the same year, the merchants of York petitioned in parliament against the Hollanders, and desired their ships might be stayed both in England and at Calais. The king's answer was, Let it be declared unto the king's council, and they shall have such remedy as is according to reason.

In the second year of king Richard II. the merchants of the sea-coast did complain of divers spoils upon their ships and goods by the Spaniard. The king's answer was, That with the advice of his council he would procure remedy.

His lordship cited two other precedents; the one, in the second year of king Henry IV. of a petition against the merchants of Genoa; the other, in the eleventh year of king Henry VI. of a petition against the merchants of the still-yard, which I omit, because they contain no variety of answer.

His lordship farther cited two precedents concerning other points of prerogative, which are likewise flowers of the crown; the one, touching the

king's supremacy ecclesiastical, the other, touching the order of weights and measures. The former of them was in the time of king Richard II. at what time the commons complained against certain encroachments and usurpations of the pope; and the king's answer was, "The king hath given order to "his council to treat with the bishops thereof." The other was in the eighteenth year of king Edward I. at which time complaint was made against uneven weights: and the king's answer was, "Vocentur "partes ad placita regis, et fiat justitia;" whereby it appeared, that the kings of this realm still used to refer causes petitioned in parliament to the proper places of cognizance and decision. But for the matter of war and peace, as appears in all the former precedents, the kings ever kept it in "scrinio pec-"toris," in the shrines of their own breast, assisted and advised by their council of estate.

Inasmuch as his lordship did conclude his enumeration of precedents with a notable precedent in the seventeenth year of king Richard II. a prince of no such glory nor strength; and yet when he made offer to the commons in parliament that they should take into their considerations matter of war and peace then in hand; the commons, in modesty, excused themselves, and answered, "The commons "will not presume to treat of so high a charge." Out of all which precedents his lordship made this inference, that as "dies diem docet," so by these examples wise men will be admonished to forbear those petitions to princes, which are not likely to

have either a welcome hearing, or an effectual answer.

And for prejudice that might come of handling and debating matter of war and peace in parliament, he doubted not, but that the wisdom of this house did conceive upon what secret considerations and motives that point did depend. For that there is no king which will providently and maturely enter into a war, but will first balance his own forces; seek to anticipate confederacies and alliances, revoke his merchants, find an opportunity of the first breach, and many other points, which, if they once do but take wind, will prove vain and frustrate. And therefore that this matter, which is "arcanum imperii," one of the highest mysteries of estate, must be suffered to be kept within the veil: his lordship adding, that he knew not well whether, in that which he had already said out of an extreme desire to give us satisfaction, he had not communicated more particulars than perhaps was requisite. Nevertheless, he confessed, that sometimes parliaments have been made acquainted with matter of war and peace in a generality; but it was upon one of these two motives; when the king and council conceived that either it was material to have some declaration of the zeal and affection of the people; or else when the king needed to demand moneys and aids for the charge of the wars; wherein if things did sort to war, we were sure enough to hear of it: his lordship hoping that his majesty would find in us no less readiness to support it than to persuade it.

Now, Mr. Speaker, for the last part; wherein his lordship considered the petition, as it was recommended from us to the upper house; his lordship delivered thus much from their lordships; that they would make a good construction of our desires, as those which they conceived did rather spring out of a feeling of the king's strength, and out of a feeling of the subjects' wrongs; nay more out of a wisdom and depth, to declare our forwardness, if need were, to assist his majesty's future resolutions, which declaration might be of good use for his majesty's service, when it should be blown abroad; rather, I say, than that we did in any sort determine by this their overture, to do that wrong to his highness's supreme power, which haply might be inferred by those that were rather apt to make evil than good illations of our proceedings. And yet, that their lordships, for the reasons before made, must plainly tell us, that they neither could nor would concur with us, nor approve the course; and therefore concluded, that it would not be amiss for us, for our better contentment, to behold the conditions of the last peace with Spain, which were of a strange nature to him that duly observes them; no forces recalled out of the Low Countries; no new forces, as to voluntaries, restrained to go thither; so as the king may be in peace, and never a subject in England but may be in war: and then to think thus with ourselves, that that king, which would give no ground in making his peace, will not lose any ground, upon just provocation, to enter into an honourable war.

And that in the mean time we should know thus much. that there could not be more forcible negociation on the king's part, but blows, to procure remedy of those wrongs; nor more fair promises on the king of Spain's part, to give contentment concerning the same; and therefore that the event must be expected.

And thus, Mr. Speaker, have I passed over the speech of this worthy lord, whose speeches, as I have often said, in regard of his place and judgment, are extraordinary lights to this house; and have both the properties of light, that is, conducting, and comforting. And although, Mr. Speaker, a man would have thought nothing had been left to be said, yet I shall now give you account of another speech, full of excellent matter and ornaments, and without iteration: which, nevertheless, I shall report more compendiously, because I will not offer the speech that wrong, as to report it at large, when your minds percase and attentions are already wearied.

The other earl, who usually doth bear a principal part upon all important occasions, used a speech, first of preface, then of argument. In his preface he did deliver, that he was persuaded that both houses did differ rather in credulity and belief, than in intention and desire: for it might be their lordships did not believe the information so far, but yet desired the reformation as much.

His lordship said farther, that the merchant was a state and degree of persons, not only to be respected, but to be prayed for, and graced them with the best additions; that they were the convoys of our sup-

plies, the vents of our abundance, Neptune's almsmen, and fortune's adventurers. His lordship proceeded and said, this question was new to us, but ancient to them; assuring us, that the king did not bear in vain the device of the thistle, with the word, "Nemo me lacessit impune;" and that as the multiplying of his kingdoms maketh him feel his own power; so the multiplying of our loves and affections made him to feel our griefs.

For the arguments or reasons, they were five in number, which his lordship used for satisfying us why their lordships might not concur with us in this petition. The first was the composition of our house, which he took in the first foundation thereof to be merely democratical, consisting of knights of shires and burgesses of towns, and intended to be of those that have their residence, vocation, and employment in the places for which they serve: and therefore to have a private and local wisdom, according to that compass, and so not fit to examine or determine secrets of estate, which depend upon such variety of circumstances; and therefore added to the precedent formerly vouched, of the seventeenth of king Richard II. when the commons disclaimed to intermeddle in matter of war and peace; that their answer was, that they would not presume to treat of so high and variable a matter. And although his lordship acknowledged that there be divers gentlemen, in the mixture of our house, that are of good capacity and insight in matters of estate; yet that was the accident of the person, and not the intention of the

place; and things were to be taken in the institution, not in the practice.

His lordship's second reason was, that both by philosophy and civil law, "ordinatio belli et pacis est "absoluti imperii," a principal flower of the crown; which flowers ought to be so dear unto us, as we ought, if need were, to water them with our blood: for if those flowers should, by neglect, or upon facility and good affection, wither and fall, the garland would not be worth the wearing.

His lordship's third reason was, that kings did so love to imitate "primum mobile," as that they do not like to move in borrowed motions: so that in those things that they do most willingly intend, yet they endure not to be prevented by request: whereof he did allege a notable example in king Edward III. who would not hearken to the petition of his commons, that besought him to make the black prince prince of Wales: but yet, after that repulse of their petition, out of his own mere motion he created him.

His lordship's fourth reason was, that it might be some scandal to step between the king and his own virtue; and that it was the duty of subjects rather to take honours from kings' servants and give them to kings, than to take honours from kings and give them to their servants: which he did very elegantly set forth in the example of Joab, who, lying at the siege of Rabbah, and finding it could not hold out, writ to David to come and take the honour of taking the town.

His lordship's last reason was, that it may cast some aspersion upon his majesty; implying, as if the king slept out the sobs of his subjects, until he was awaked with the thunderbolt of a parliament.

But his lordship's conclusion was very noble, which was with a protestation, that what civil threats, contestation, art, and argument can do, hath been used already to procure remedy in this cause; and a promise, that if reason of state did permit, as their lordships were ready to spend their breath in the pleading of that we desire, so they would be ready to spend their bloods in the execution thereof.

This was the substance of that which passed.

NOTES

OF

A SPEECH

CONCERNING A WAR WITH SPAIN.

THAT ye conceive there will be little difference in opinion, but that all will advise the king not to entertain further a treaty, wherein he hath been so manifestly and so long deluded.

That the difficulty therefore will be in the consequences thereof; for to the breach of treaty, doth necessarily succeed a despair of recovering the Palatinate by treaty, and so the business falleth upon a war. And to that you will apply your speech, as being the point of importance, and besides, most agreeable to your profession and place.

To a war, such as may promise success, there are three things required: a just quarrel; sufficient forces and provisions; and a prudent and politic choice of the designs and actions whereby the war shall be managed.

For the quarrel, there cannot be a more just quarrel by the laws both of nature and nations, than for the recovery of the ancient patrimony of the king's children, gotten from them by an usurping sword, and an insidious treaty,

But further, that the war well considered is not for the Palatinate only, but for England and Scotland; for if we stay till the Low Countrymen be ruined, and the party of the papists within the realm be grown too strong, England, Scotland, and Ireland, are at the stake.

Neither doth it concern the state only, but our Church: other kings, papists, content themselves to maintain their religion in their own dominions; but the kings of Spain run a course to make themselves protectors of the popish religion, even amongst the subjects of other kings: almost like the Ottomans, that profess to plant the law of Mahomet by the sword; and so the Spaniards do of the Pope's law. And therefore if either the king's blood, or our own blood, or Christ's blood be dear unto us, the quarrel is just, and to be embraced.

For the point of sufficient forces, the balancing of the forces of these kingdoms and their allies, with Spain and their allies, you know to be a matter of great and weighty consideration; but yet to weigh them in a common understanding, for your part, you are of opinion that Spain is no such giant; or if he be a giant, it will be but like Goliah and David, for God will be on our side.

But to leave these spiritual considerations: you do not see in true discourse of peace and war, that we ought to doubt to be overmatched. To this opinion you are led by two things which lead all men; by experience, and by reason.

For experience; you

age, take it for 100 years, there was ever any encounter between Spanish and English of importance, either by sea or land, but the English came off with the honour; witness the Lammas day, the retreat of Gaunt, the battle of Newport, and some others: but there have been some actions, both by sea and land, so memorable as scarce suffer the less to be spoken of. By sea, that of eighty-eight, when the Spaniards, putting themselves most upon their stirrups, sent forth that invincible Armada which should have swallowed up England quick; the success whereof was, that although that fleet swam like mountains upon our seas, yet they did not so much as take a cock-boat of ours at sea, nor fire a cottage at land, but came through our channel, and were driven, as Sir Walter Raleigh says, by squibs, fire-boats he means, from Calais, and were soundly beaten by our ships in fight, and many of them sunk, and finally durst not return the way they came, but made a scattered perambulation, full of shipwrecks, by the Irish and Scottish seas to get home again; just according to the curse of the Scriptures, "that "they came out against us one way, and fled before "us seven ways." By land, who can forget the two voyages made upon the continent itself of Spain, that of Lisbon, and that of Cales, when in the former we knocked at the gates of the greatest city either of Spain or Portugal, and came off without seeing an enemy to look us in the face? And though we failed in our foundation, for that Antonio,

whom we thought to replace in his kingdom, found no party at all, yet it was a true trial of the gentleness of Spain, which suffered us to go and come without any dispute. And for the latter, of Cales, it ended in victory; we ravished a principal city of wealth and strength in the high countries, sacked it, fired the Indian fleet that was in the port, and came home in triumph; and yet to this day were never put in suit for it, nor demanded reasons for our doings. You ought not to forget the battle of Kinsale in Ireland, what time the Spanish forces were joined with the Irish, good soldiers as themselves, or better, and exceeded us far in number, and yet they were soon defeated, and their general D'Avila taken prisoner, and that war by that battle quenched and ended.

And it is worthy to be noted how much our power in those days was inferior to our present state. Then, a lady old, and owner only of England, intangled with the revolt of Ireland, and her confederates of Holland much weaker, and in no conjuncture. Now, a famous king, and strengthened with a prince of singular expectation, and in the prime of his years, owner of the entire isle of Britain, enjoying Ireland populate and quiet, and infinitely more supported by confederates of the Low Countries, Denmark, divers of the princes of Germany, and others. As for the comparison of Spain as it was then, and as it is now, you will for good respects forbear to speak; only you will say this, that Spain

was then reputed to have the wisest council of Europe, and not a council that will come at the whistle of a favourite.

Another point of experience you would not speak of, if it were not that there is a wonderful erroneous observation, which walketh about, contrary to all the true account of time; and it is, that the Spaniard where he once gets in, will seldom or never be got out again; and they give it an ill-favoured simile which you will not name, but nothing is less true: they got footing at Brest, and some other parts in Britain, and quitted it: they had Calais, Ardes, Amiens, and were part beaten out, and part they rendred: they had Vercelles in Savoy, and fairly left it: they had the other day the Valtoline, and now have put it in deposit. What they will do at Ormus we shall see. So that, to speak truly of latter times, they have rather poached and offered at a number of enterprises, than maintained any constantly. And for Germany, in more ancient time, their great emperor Charles, after he had Germany almost in his fist, was forced in the end to go from Isburgh, as it were in a mask by torch-light, and to quit every foot of his new acquests in Germany, which you hope likewise will be the hereditary issue of this late purchase of the Palatinate. And thus much for experience.

For reason: it hath many branches; you will but extract a few first. It is a nation thin sown of men, partly by reason of the sterility of their soil; and partly because their natives are exhaust by so many

employments in such vast territories as they possess, so that it hath been counted a kind of miracle to see together ten or twelve thousand native Spaniards in an army. And although they have at this time great numbers of miscellany soldiers in their armies and garrisons, yet, if there should be the misfortune of a battle, they are ever long about it to draw on supplies.

They tell a tale of a Spanish ambassador that was brought to see their treasury of St. Mark at Venice, and still he looked down to the ground; and being asked the reason, said, "he was looking to see "whether the treasure had any root, so that, if that "were spent, it would grow again; as his master's "had." But, howsoever it be of their treasure, certainly their forces have scarcely any root, or at least such a root as putteth forth very poorly and slowly; whereas there is not in the world again such a spring and seminary of military people as is England, Scotland, and Ireland; nor of seamen as is this island and the Low Countries: so as if the wars should mow them down, yet they suddenly may be supplied and come up again.

A second reason is, and it is the principal, that if we truly consider the greatness of Spain, it consisteth chiefly in their treasure, and their treasure in their Indies, and their Indies, both of them, is but an accession to such as are masters by sea; so as this axle-tree, whereupon their greatness turns, is soon cut a-two by any that shall be stronger than they at sea. So then you report yourself to their opinions,

and the opinions of all men, enemies or whosoever; whether that the maritime forces of Britain and the Low Countries are not able to beat them at sea. For if that be, you see the chain is broken from shipping to Indies, from Indies to treasure, and from treasure to greatness.

The third reason, which hath some affinity with this second, is a point comfortable to hear in the state that we now are; wars are generally causes of poverty and consumption. The nature of this war, you are persuaded, will be matter of restorative and enriching; so that, if we go roundly on with supplies and provisions at the first, the war in continuance will find itself. That you do but point at this, and will not enlarge it.

Lastly, That it is not a little to be considered, that the greatness of Spain is not only distracted extremely, and therefore of less force; but built upon no very sound foundations, and therefore they can have the less strength by any assured and confident confederacy. With France they are in competition for Navarre, Milan, Naples, and the Franche County of Burgundy; with the see of Rome, for Naples also; for Portugal, with the right heirs of that line; for that they have in their Low Countries, with the United Provinces; for Ormus, now, with Persia; for Valencia, with the Moors expulsed and their confederates; for the East and West Indies, with all the world. So that if every bird had his feather, Spain would be left wonderful naked. But yet there is a greater confederation against them than by

means of any of these quarrels or titles; and that is contracted by the fear that almost all nations have of their ambition, whereof men see no end. And thus much for the balancing of their forces.

For the last point, which is the choice of the designs and enterprises, in which to conduct the war; you will not now speak, because you should be forced to descend to divers particulars, whereof some are of a more open, and some of a more secret nature. But that you would move the house to make a selected committee for that purpose; not to estrange the house in any sort, but to prepare things for them, giving them power and commission to call before them, and to confer with any martial men or others that are not of the house, that they shall think fit, for their advice and information: and so to give an account of the business to a general committee of the whole house.

CONSIDERATIONS

TOUCHING

A WAR WITH SPAIN.

INSCRIBED TO PRINCE CHARLES,

ANNO MDCXXIV.

Your highness hath an imperial name. It was a Charles that brought the empire first into France; a Charles that brought it first into Spain; why should not Great Britain have its turn? But to lay aside all that may seem to have a shew of fumes and fancies, and to speak solids: a war with Spain, if the king shall enter into it, is a mighty work; it requireth strong materials, and active motions. He that saith not so, is zealous, but not according to knowledge. But nevertheless Spain is no such giant: and he that thinketh Spain to be some great overmatch for this estate, assisted as it is, and may be, is no good mintman; but takes greatness of kingdoms according to their bulk and currency, and not after their intrinsic value. Although therefore I had wholly sequestered my thoughts from civil affairs, yet because it is a new case, and concerneth my country infinitely, I obtained of myself to set down, out of long continued experience in business of estate, and much conversation in books of policy

and history, what I thought pertinent to this business; and in all humbleness present it to your highness: hoping that at least you will discern the strength of my affection through the weakness of my abilities: for the Spaniard hath a good proverb, "De "suario si empre con la calentura;" there is no heat of affection, but is joined with some idleness of brain.

To a war are required, a just quarrel; sufficient forces and provisions; and a prudent choice of the designs. So then, I will first justify the quarrel; secondly, balance the forces; and lastly, propound variety of designs for choice, but not advise the choice; for that were not fit for a writing of this nature; neither is it a subject within the level of my judgment; I being, in effect, a stranger to the present occurrences.

Wars, I speak not of ambitious predatory wars, are suits of appeal to the tribunal of God's justice, where there are no superiors on earth to determine the cause: and they are, as civil pleas are, plaints, or defences. There are therefore three just grounds of war with Spain: one plaint, two upon defence. Solomon saith, "A cord of three is not easily broken:" but especially when every of the lines would hold single by itself. They are these: the recovery of the Palatinate; a just fear of the subversion of our civil estate; a just fear of the subversion of our Church and religion. For in the handling of the two last grounds of war, I shall make it plain, that wars preventive upon just fears are true defensives, as well as upon actual invasions: and again, that

the process of this action drew on a re-surprise of the castle by the Thebans, a recovery of the town, and a current of the war even unto the walls of Sparta. I demand, was the defence of the city of Sparta, and the expulsion of the Thebans out of the Laconian territories, unjust? The sharing of that part of the duchy of Milan, which lieth upon the river of Adda, by the Venetians, upon contract with the French, was an ambitious and unjust purchase. This wheel set on going, did pour a war upon the Venetians with such a tempest, as Padua and Trevigi were taken from them, and all their dominions upon the continent of Italy abandoned, and they confined within the salt waters. Will any man say, that the memorable recovery and defence of Padua, when the gentlemen of Venice, unused to the wars, out of the love of their country, became brave and martial the first day, and so likewise the re-adeption of Trevigi, and the rest of their dominions, was matter of scruple, whether just or no, because it had source from a quarrel ill begun? The war of the duke of Urbin, nephew to pope Julius the second, when he made himself head of the Spanish mutineers, was as unjust as unjust might be; a support of desperate rebels; an invasion of St. Peter's patrimony, and what you will. The race of this war fell upon the loss of Urbin itself, which was the duke's undoubted right; yet, in this case, no penitentiary, though he had enjoined him never so strait penance to expiate his first offence, would have counselled him to have given

over the pursuit of his right for Urbin; which, after, he prosperously re-obtained, and hath transmitted to his family yet until this day. Nothing more unjust than the invasion of the Spanish Armada in 88 upon our seas: for our land was holy land to them, they might not touch it; shall I say therefore, that the defence of Lisbon, or Cales, afterwards, was unjust? There be thousands of examples; "utor "in re non dubia exemplis non necessariis:" the reason is plain; wars are "vindictæ," revenges, reparations. But revenges are not infinite, but according to the measure of the first wrong or damage. And therefore when a voluntary offensive war, by the design or fortune of the war, is turned to a necessary defensive war, the scene of the tragedy is changed, and it is a new act to begin. For the particular actions of war, though they are complicate in fact, yet they are seperate and distinct in right: like to cross suits in civil pleas, which are sometimes both just. But this is so clear, as needeth no farther to be insisted upon. And yet if in things so clear, it were fit to speak of more or less clear in our present cause, it is the more clear on our part, because the possession of Bohemia is settled with the emperor. For though it be true, that "non datur "compensatio injuriarum;" yet were there somewhat more colour to detain the Palatinate, as in the nature of a recovery, in value or compensation, if Bohemia had been lost, or were still the stage of war. Of this therefore I speak no more. As for the title of proscription or forfeiture, wherein the

emperor, upon the matter, hath been judge and party, and hath justiced himself, God forbid but that it should well endure an appeal to a war. For certainly the court of heaven is as well a chancery to save and debar forfeitures, as a court of common law to decide rights; and there would be work enough in Germany, Italy, and other parts, if imperial forfeitures should go for good titles.

Thus much for the first ground of war with Spain, being in the nature of a plaint for the recovery of the Palatinate: omitting here that which might be the seed of a larger discourse, and is verified by a number of examples; that whatsoever is gained by an abusive treaty, ought to be restored "in integrum:" as we see the daily experience of this in civil pleas; for the images of great things are best seen contracted into small glasses: we see, I say, that all pretorian courts, if any of the parties be entertained or laid asleep, under pretence of arbitrement or accord, and that the other party, during that time, doth cautelously get the start and advantage at common law, though it be to judgment and execution; yet the pretorian court will set back all things "in statu quo prius," no respect had to such eviction or dispossession. Lastly, let there be no mistaking; as if when I speak of a war for the recovery of the Palatinate, I meant, that it must be "in linea recta," upon that place: for look into "jus fœciale," and all examples, and it will be found to be without scruple, that after a legation "ad res repetendas," and a refusal, and

a denunciation or indiction of a war, the war is no more confined to the place of the quarrel, but is left at large and to choice, as to the particular conducing designs, as opportunities and advantages shall invite.

To proceed therefore to the second ground of a war with Spain, we have set it down to be, a just fear of the subversion of our civil estate. So then, the war is not for the Palatinate only, but for England, Scotland, Ireland, our king, our prince, our nation, all that we have. Wherein two things are to be proved: The one, that a just fear, without an actual invasion or offence, is a sufficient ground of a war, and in the nature of a true defensive: the other, that we have towards Spain cause of just fear; I say, just fear: for as the civilians do well define, that the legal fear is "justus metus qui cadit in "constantem virum" in private causes: so there is "justus metus qui cadit in constantem senatum, in "causa publica;" not out of umbrages, light jealousies, apprehensions afar off, but out of clear foresight of imminent danger.

Concerning the former proposition, it is good to hear what time saith. Thucydides, in his inducement to his story of the great war of Peloponnesus, sets down in plain terms, that the true cause of that war was the overgrowing greatness of the Athenians, and the fear that the Lacedæmonians stood in thereby; and doth not doubt to call it, a necessity imposed upon the Lacedæmonians of a war; which are the words of a mere defensive: adding, that

the other causes were but specious and popular. "Verissimam quidem, sed minime sermone celebra-"tam, arbitror extitisse belli causam, Athenienses, "magnos effectos et Lacedæmoniis formidolosos, "necessitatem illis imposuisse bellandi: quæ autem "propalam ferebantur utrinque causæ, istæ fuerant, "&c." "The truest cause of this war, though least "voiced, I conceive to have been this; that the "Athenians, being grown great, to the terror of the "Lacedæmonians, did impose upon them a necessity "of a war: but the causes that went abroad in speech "were these, &c." Sulpitius Galba, consul, when he persuaded the Romans to a preventive war, with the later Philip king of Macedon, in regard of the great preparations which Philip had then on foot, and his designs to ruin some of the confederates of the Romans, confidently saith, that they who took that for an offensive war, understood not the state of the question. "Ignorare videmini mihi, Quirites, non, "utrum bellum an pacem habeatis, vos consuli, "neque enim liberum id vobis permittet Philippus, "qui terra marique ingens bellum molitur, sed "utrum in Macedoniam legiones transportetis, an "hostem in Italiam recipiatis." "Ye seem to me, "ye Romans, not to understand, that the consul-"tation before you is not, whether you shall have "war or peace, for Philip will take order you shall "be no choosers, who prepareth a mighty war both "by land and sea, but whether you shall transport "the war into Macedon, or receive it into Italy." Antiochus, when he incited Prusias king of Bithynia,

at that time in league with the Romans, to join with him in war against them, setteth before him a just fear of the overspreading greatness of the Romans, comparing it to a fire that continually took, and spread from kingdom to kingdom: "Venire Ro- "manos ad omnia regna tollenda, ut nullum usquam "orbis terrarum nisi Romanum imperium esset; "Philippum et Nabin expugnatos, se tertium peti; "ut quisque proximus ab oppresso sit, per omnes "velut continens incendium pervasurum:" "That "the Romans came to pull down all kingdoms, and "to make the state of Rome an universal monarchy; "that Philip and Nabis were already ruinated, and "now was his turn to be assailed: so that as every "state lay next to the other that was oppressed, so "the fire perpetually grazed." Wherein it is well to be noted, that towards ambitious states, which are noted to aspire to great monarchies, and to seek upon all occasions to enlarge their dominions, "crescunt argumenta justi metus;" all particular fears do grow and multiply out of the contemplation of the general courses and practice of such states. Therefore in deliberations of war against the Turk, it hath been often, with great judgment, maintained, that Christian princes and states have always a sufficient ground of invasive war against the enemy; not for cause of religion, but upon a just fear; forasmuch as it is a fundamental law in the Turkish empire, that they may, without any other provocation, make war upon Christendom for the propagation of their law; so that there lieth upon the Christians a per-

petual fear of a war, hanging over their heads, from them; and therefore they may at all times, as they think good, be upon the prevention. Demosthenes exposeth to scorn wars which are not preventive, comparing those that make them to country fellows in a fencing-school, that never ward till the blow be past: "Ut barbari pugiles dimicare solent, ita vos "bellum geritis cum Philippo: ex his enim is, qui "ictus est, ictui semper inhæret: quod si eum alibi "verberes, illo manus transfert; ictum autem de-"pellere, aut prospicere, neque scit neque vult." "As country fellows use to do when they play at "wasters, such a kind of war do you, Athenians, "make with Philip; for with them he that gets a "blow straight falleth to ward when the blow is "passed; and if you strike him in another place, "thither goes his hand likewise: but to put by, or "foresee a blow, they neither have the skill, nor the "will."

Clinias the Candian, in Plato, speaks desperately and wildly, as if there were no such thing as peace between nations; but that every nation expects but his advantage to war upon another. But yet in that excess of speech there is thus much that may have a civil construction; namely, that every state ought to stand upon its guard, and rather prevent than be prevented. His words are "Quam rem fere vocant "pacem, nudum et inane nomen est; revera autem "omnibus, adversus omnes civitates, bellum sempi-"ternum perdurat." "That which men for the "most part call peace, is but a naked and empty

" name; but the truth is, that there is ever between " all estates a secret war." I know well this speech is the objection and not the decision, and that it is after refuted; but yet, as I said before, it bears thus much of truth, that if that general malignity, and predisposition to war, which he untruly figureth to be in all nations, be produced and extended to a just fear of being oppressed, then it is no more a true peace, but a name of a peace.

As for the opinion of Iphicrates the Athenian, it demands not so much towards a war as a just fear, but rather cometh near the opinion of Clinias; as if there were ever amongst nations a brooding of a war, and that there is no sure league but impuissance to do hurt. For he, in the treaty of peace with the Lacedæmonians, speaketh plain language; telling them, there could be no true and secure peace, except the Lacedæmonians yielded to those things, which being granted, it would be no longer in their power to hurt the Athenians, though they would: and to say truth, if one mark it well, this was in all memory the main piece of wisdom, in strong and prudent counsels, to be in perpetual watch, that the states about them should neither by approach, nor by increase of dominion, nor by ruining confederates, nor by blocking of trade, nor by any the like means, have it in their power to hurt or annoy the states they serve; and whensoever any such cause did but appear, straightways to buy it out with a war, and never take up peace at credit and upon interest. It is so memorable, as it is yet as fresh as if it were done

yesterday, how that triumvirate of kings, Henry the eighth of England, Francis the first of France, and Charles the fifth emperor and king of Spain, were in their times so provident, as scarce a palm of ground could be gotten by either of the three, but that the other two would be sure to do their best, to set the balance of Europe upright again. And the like diligence was used in the age before by that league, wherewith Guicciardine beginneth his story, and maketh it, as it were, the calendar of the good days of Italy, which was contracted between Ferdinando king of Naples, Lorenzo of Medici potentate of Florence, and Lodovico Sforza duke of Milan, designed chiefly against the growing power of the Venetians; but yet so, as the confederates had a perpetual eye one upon another, that none of them should overtop. To conclude therefore; howsoever some schoolmen, otherwise reverend men, yet fitter to guide penknives than swords, seem precisely to stand upon it, that every offensive war must be "ultio," a revenge, that presupposeth a precedent assault or injury; yet neither do they descend to this point, which we now handle, of a just fear; neither are they of authority to judge this question against all the precedents of time. For certainly, as long as men are men, the sons, as the poets allude, of Prometheus, and not of Epimetheus, and as long as reason is reason, a just fear will be a just cause of a preventive war; but especially if it be part of the case, that there be a nation that is manifestly detected to aspire to monarchy and new acquests; then

other states, assuredly, cannot be justly accused for not staying for the first blow; or for not accepting Polyphemus's courtesy, to be the last that shall be eaten up.

Nay, I observe farther, that in that passage of Plato which I cited before, and even in the tenet of that person that beareth the resolving part, and not the objecting part, a just fear is justified for a cause of an invasive war, though the same fear proceed not from the fault of the foreign state to be assailed: for it is there insinuated, that if a state, out of the distemper of their own body, do fear sedition and intestine troubles to break out amongst themselves, they may discharge their own ill humours upon a foreign war for a cure. And this kind of cure was tendered by Jasper Coligni, admiral of France, to Charles the ninth the French king, when by a vive and forcible persuasion he moved him to a war upon Flanders, for the better extinguishment of the civil wars of France; but neither was that counsel prosperous; neither will I maintain that position: for I will never set politics against ethics; especially for that true ethics are but as a handmaid to divinity and religion. Surely St. Thomas, who had the largest heart of the school divines, bendeth chiefly his style against the depraved passions which reign in making wars, speaking out of St. Augustine: "Nocendi cupiditas, ulciscendi crudelitas, implacatus et implacabilis animus, feritas rebellandi, libido dominandi, et si quæ sunt similia, hæc sunt quæ in bellis jure culpantur." And the same St. Thomas

in his own text, defining of the just causes of a war, doth leave it upon very general terms: "Requiritur "ad bellum causa justa, ut scilicet illi, qui impug- "nantur, propter aliquam culpam impugnationem "mereantur:" for "impugnatio culpæ" is a far more general word, than "ultio injuriæ." And thus much for the first proposition, of the second ground of a war with Spain: namely, that a just fear is a just cause of a war; and that a preventive war is a true defensive.

The second or minor proposition was this; that this kingdom hath cause of just fear of overthrow from Spain. Wherein it is true, that fears are ever seen in dimmer lights than facts. And on the other side, fears use, many times, to be represented in such an imaginary fashion, as they rather dazzle men's eyes than open them: and therefore I will speak in that manner which the subject requires; that is, probably, and moderately, and briefly. Neither will I deduce these fears to present occurrences; but point only at general grounds, leaving the rest to more secret counsels.

Is it nothing, that the crown of Spain hath enlarged the bounds thereof within this last sixscore years, much more than the Ottoman's? I speak not of matches or unions, but of arms, occupations, invasions. Granada, Naples, Milan, Portugal, the East and West Indies; all these are actual additions to that crown. They had a mind to French Britain, the lower part of Picardy, and Piedmont; but they have let fall their bit. They have, to this day, such

things seem to come apace to their former estate; nay, with far greater disadvantage to us; for now that they have almost continued, and, as it were, arched their dominions from Milan, by the Valtoline, and Palatinate, to the Low Countries, we see how they thirst and pant after the utter ruin of those states; having in contempt almost the German nation, and doubting little opposition except it come from England: whereby either we must suffer the Dutch to be ruined, to our own manifest prejudice; or put it upon the hazard I spake of before, that Spain will cast at the fairest. Neither is the point of internal danger, which groweth upon us, to be forgotten; this, that the party of the papists in England are become more knotted, both in dependence towards Spain and amongst themselves, than they have been. Wherein again comes to be remembered the case of 88: for then also it appeared by divers secret letters, that the design of Spain was, for some years, before the invasion attempted, to prepare a party in this kingdom to adhere to the foreigner at his coming. And they bragged, that they doubted not to abuse and lay asleep the queen and council of England, as to have any fear of the party of papists here; for that they knew, they said, the state would but cast the eye and look about to see whether there were any eminent head of that party, under whom it might unite itself; and finding none worth the thinking on, the state would rest secure and take no apprehension: whereas they meant, they said, to take a course to deal with the people, and par-

and therefore there was no other way but to assail and depress England, which was as a back of steel to the Flemings. And who can warrant, I pray, that the same counsel and design will not return again? So as we are in a strange dilemma of danger: for if we suffer the Flemings to be ruined, they are our outwork, and we shall remain naked and dismantled: if we succour them strongly, as is fit, and set them upon their feet, and do not withal weaken Spain, we hazard to change the scene of the war, and to turn it upon Ireland or England: like unto rheums and defluxions, which if you apply a strong repercussive to the place affected, and do not take away the cause of the disease, will shift and fall straightways to another joint or place. They have also twice invaded Ireland; once under the pope's banner, when they were defeated by the lord Gray: and after in their own name, when they were defeated by the Lord Mountjoy. So as let this suffice for a taste of their disposition towards us. But it will be said, this is an almanack for the old year; since 88 all hath been well; Spain hath not assailed this kingdom, howsoever by two several invasions from us mightily provoked. It is true: but then consider, that immediately after 88, they were imbroiled for a great time in the protection of the league of France, whereby they had their hands full; after being brought extreme low by their vast and continual imbracements, they were enforced to be quiet that they might take breath, and do reparations upon their former wastes. But now of late,

be, no man will doubt, that a defensive war against a foreigner for religion is lawful. Of an offensive war there is more dispute. And yet in that instance of the war for the Holy Land and sepulchre, I do wonder sometimes, that the schoolmen want words to defend that, which S. Bernard wanted words to commend. But I, that in this little extract of a treatise do omit things necessary, am not to handle things unnecessary. No man, I say, will doubt, but if the pope, or king of Spain, would demand of us to forsake our religion upon pain of a war, it were as unjust a demand, as the Persians made to the Grecians of land and water; or the Ammonites to the Israelites of their right eyes. And we see all the heathen did style their defensive wars, "pro aris "et focis;" placing their altars before their hearths. So that it is in vain of this to speak farther. Only this is true; that the fear of the subversion of our religion from Spain is the more just, for that all other catholic princes and states content and contain themselves to maintain their religion within their own dominions, and meddle not with the subjects of other states; whereas the practice of Spain hath been, both in Charles the fifth's time, and in the time of the league in France, by war; and now with us, by conditions of treaty, to intermeddle with foreign states, and to declare themselves protectors general of the party of catholics, through the world. As if the crown of Spain had a little of this, that they would plant the pope's laws by arms, as the Ottomans do the law of Mahomet. Thus much concerning the

first main point of justifying the quarrel, if the king shall enter into a war; for this that I have said, and all that followeth to be said, is but to shew what he may do.

The second main part of that I have propounded to speak of, is the balance of forces between Spain and us. And this also tendeth to no more, but what the king may do. For what he may do is of two kinds: what he may do as just; and what he may do as possible. Of the one I have already spoken; of the other I am now to speak. I said, Spain was no such giant; and yet if he were a giant, it will be but as it was between David and Goliath, for "God "is on our side." But to leave all arguments that are supernatural, and to speak in an human and politic sense, I am led to think that Spain is no overmatch for England, by that which leadeth all men; that is, experience and reason. And with experience I will begin, for there all reason beginneth.

Is it fortune, shall we think, that, in all actions of war or arms, great and small, which have happened these many years, ever since Spain and England have had any thing to debate one with the other, the English upon all encounters have perpetually come off with honour, and the better? It is not fortune sure; she is not so constant. There is somewhat in the nation and natural courage of the people, or some such thing. I will make a brief list of the particulars themselves in an historical truth, no ways strouted, nor made greater by language. This were a fit speech, you will say, for a general,

in the head of an army, when they were going to battle: yes; and it is no less fit speech to be spoken in the head of a council, upon a deliberation of entrance into a war. Neither speak I this to disparage the Spanish nation, whom I take to be of the best soldiers in Europe; but that sorteth to our honour, if we still have had the better hand.

In the year 1578, was that famous lammas day, which buried the reputation of Don John of Austria, himself not surviving long after. Don John being superior in forces, assisted by the prince of Parma, Mondragon, Mansell, and other the best commanders of Spain, confident of victory, charged the army of the States near Rimenant, bravely and furiously at the first; but after a fight maintained by the space of a whole day, was repulsed, and forced to a retreat, with great slaughter of his men; and the course of his farther enterprises was wholly arrested; and this chiefly by the prowess and virtue of the English and Scotish troops, under the conduct of Sir John Norris and Sir Robert Stuart, colonels: which troops came to the army but the day before, harassed with a long and wearisome march; and, as it is left for a memorable circumstance in all stories, the soldiers being more sensible of a little heat of the sun, than of any cold fear of death, cast away their armour and garments from them, and fought in their shirts: and, as it was generally conceived, had it not been that the count of Bossu was slack in charging the Spaniards upon their retreat, this fight had sorted to an absolute defeat. But it was enough to chas-

tise Don John for his insidious treaty of peace, wherewith ye had abused the States at his first coming. And the fortune of the day, besides the testimony of all stories, may be the better ascribed to the service of the English and Scotish, by comparison of this charge near Rimenant, where the English and Scotish in great numbers came in action, with the like charge given by Don John half a year before at Glemblours, where the success was contrary: there being at that time in the army but a handful of English and Scotish, and they put in disarray by the horsemen of their own fellows.

The first dart of war which was thrown from Spain or Rome upon the realm of Ireland, was in the year 1580; for the design of Stukely blew over into Afric; and the attempt of Saunders and Fitz-Maurice had a spice of madness. In that year Ireland was invaded by Spanish and Italian forces, under the pope's banner, and the conduct of San Josepho, to the number of seven hundred or better, which landed at Smerwick in Kerry. A poor number it was to conquer Ireland to the pope's use; for their design was no less: but withal they brought arms for five thousand men above their own company, intending to arm so many of the rebels of Ireland. And their purpose was, to fortify in some strong place of the wild and desolate country, and there to nestle till greater succours came; they being hastened unto this enterprise upon a special reason of state, not proper to the enterprise itself; which was by the invasion of Ireland, and the noise thereof, to

trouble the council of England, and to make a diversion of certain aids, that then were preparing from hence for the Low Countries. They chose a place where they erected a fort, which they called the Fort del Or; and from thence they bolted like beasts of the forest, sometimes into the woods and fastnesses, and sometimes back again to their den. Soon after siege was laid to the fort by the lord Gray, then deputy, with a smaller number than those were within the fort; venturously indeed; but haste was made to attack them before the rebels came in to them. After the siege of four days only, and two or three sallies, with loss on their part, they that should have made good the fort for some months, till new succours came from Spain, or at least from the rebels of Ireland, yielded up themselves without conditions at the end of those four days. And for that they were not in the English army enough to keep every man a prisoner, and for that also the deputy expected instantly to be assailed by the rebels; and again, there were no barks to throw them into, and send them away by sea; they were all put to the sword; with which queen Elizabeth was afterwards much displeased.

In the year 1582, was that memorable retreat of Gaunt; than the which there hath not been an exploit of war more celebrated. For in the true judgment of men of war, honourable retreats are no ways inferior to brave charges; as having less of fortune, more of discipline, and as much of valour. There were to the number of three hundred horse,

and as many thousand foot English, commanded by Sir John Norris, charged by the prince of Parma, coming upon them with seven thousand horse; besides that the whole army of Spaniards was ready to march on. Nevertheless Sir John Norris maintained a retreat without disarray, by the space of some miles, part of the way champaign, unto the city of Gaunt, with less loss of men than the enemy: the duke of Anjou, and the prince of Orange, beholding this noble action from the walls of Gaunt, as in a theatre, with great admiration.

In the year 1585, followed the prosperous expedition of Drake and Carlile into the West Indies, in the which I set aside the taking of St. Jago and St. Domingo in Hispaniola, as surprises rather than encounters. But that of Carthagena, where the Spaniards had warning of our coming, and had put themselves in their full strength, was one of the hottest services, and most dangerous assaults that hath been known. For the access to the town was only by a neck of land, between the sea on the one part, and the harbour water or inner sea on the other; fortified clean over with a strong rampier and barricado; so as upon the ascent of our men, they had both great ordnance and small shot, that thundred and showered upon them from the rampier in front, and from the galleys that lay at sea in flank. And yet they forced the passage, and won the town, being likewise very well manned. As for the expedition of Sir Francis Drake, in the year 1587, for the destroying of the Spanish shipping and pro-

vision upon their own coast; as I cannot say that there intervened in that enterprise any sharp fight or encounter; so, nevertheless, it did strangely discover, either that Spain is very weak at home, or very slow to move; when they suffered a small fleet of English to make an hostile invasion or incursion upon their havens and roads, from Cadiz to Capa Sacra, and thence to Cascais; and to fire, sink, and carry away at the least, ten thousand ton of their great shipping, besides fifty or sixty of their smaller vessels; and that in the sight, and under the favour of their forts; and almost under the eye of their great admiral, the best commander of Spain by sea, the marquis de Santa Cruz, without ever being disputed with by any fight of importance. I remember Drake, in the vaunting stile of a soldier, would call this enterprise, the singing of the king of Spain's beard.

The enterprise of eighty-eight, deserveth to be stood upon a little more fully, being a miracle of time. There armed from Spain, in the year 1588, the greatest navy that ever swam upon the sea: for though there have been far greater fleets for number, yet for the bulk and building of the ships, with the furniture of great ordnance and provisions, never the like. The design was to make not an invasion only, but an utter conquest of this kingdom. The number of vessels were one hundred and thirty, whereof galliasses and galleons seventy-two goodly ships, like floating towers or castles, manned with thirty thousand soldiers and mariners. This navy was the

preparation of five whole years, at the least: it bare itself also upon divine assistance; for it received special blessing from pope Sixtus, and was assigned as an apostolical mission for the reducement of this kingdom to the obedience of the see of Rome. And, in farther token of this holy warfare, there were amongst the rest of these ships, twelve, called by the names of the twelve apostles. But it was truly conceived, that this kingdom of England could never be overwhelmed, except the land waters came in to the sea tides. Therefore was there also in readiness in Flanders, a mighty strong army of land forces, to the number of fifty thousand veteran soldiers, under the conduct of the duke of Parma, the best commander, next the French king Henry the fourth, of his time. These were designed to join with the forces at sea; there being prepared a number of flat-bottomed boats to transport the land forces, under the wing and protection of the great navy. For they made no account, but that the navy should be absolute master of the seas. Against these forces, there were prepared on our part, to the number of near one hundred ships; not so great of bulk indeed, but of a more nimble motion, and more serviceable: besides a less fleet of thirty ships, for the custody of the narrow seas. There were also in readiness at land two armies; besides other forces, to the number of ten thousand, dispersed amongst the coast towns in the southern parts. The two armies were appointed; one of them consisting of twenty-five thousand horse and foot, for the repulsing of the

enemy at their landing; and the other of twenty-five thousand for safeguard and attendance about the court and the queen's person. There were also other dormant musters of soldiers throughout all parts of the realm, that were put in readiness but not drawn together. The two armies were assigned to the leading of two generals, noble persons, but both of them rather courtiers, and assured to the state, than martial men; yet lined and assisted with subordinate commanders of great experience and valour. The fortune of the war made this enterprise at first a play at base. The Spanish navy set forth out of the Groyne in May, and was dispersed and driven back by weather. Our navy set forth somewhat later out of Plymouth, and bare up towards the coast of Spain to have fought with the Spanish navy; and partly by reason of contrary winds, partly upon advertisement that the Spaniards were gone back, and upon some doubt also that they might pass by towards the coast of England, whilst we were seeking them afar off, returned likewise into Plymouth about the middle of July. At that time came more confident advertisement, though false, not only to the lord Admiral, but to the court, that the Spaniards could not possibly come forward that year; whereupon our navy was upon the point of disbanding, and many of our men gone ashore: at which very time the Invincible Armada, for so it was called in a Spanish ostentation, throughout Europe, was discovered upon the western coast. It was a kind of surprise; for that, as was said, many of our

men were gone to land, and our ships ready to depart. Nevertheless the admiral, with such ships only as could suddenly be put in readiness, made forth towards them; insomuch as of one hundred ships, there came scarce thirty to work. Howbeit, with them, and such as came daily in, we set upon them, and gave them the chase. But the Spaniards, for want of courage, which they called commission, declined the fight, casting themselves continually into roundels, their strongest ships walling in the rest, and in that manner they made a flying march towards Calais. Our men by the space of five or six days followed them close, fought with them continually, made great slaughter of their men, took two of their great ships, and gave divers others of their ships their death's wounds, whereof soon after they sank and perished; and, in a word, distressed them almost in the nature of a defeat; we ourselves in the mean time receiving little or no hurt. Near Calais the Spaniards anchored, expecting their land-forces, which came not. It was afterwards alleged, that the duke of Parma did artificially delay his coming; but this was but an invention and pretension given out by the Spaniards; partly upon a Spanish envy against that duke, being an Italian, and his son a competitor to Portugal; but chiefly to save the monstrous scorn and disreputation, which they and their nation received by the success of that enterprise. Therefore their colours and excuses, forsooth, were, that their general by sea had a limited commission, not to fight until the land forces were

come in to them: and that the duke of Parma had particular reaches and ends of his own underhand, to cross the design. But it was both a strange commission, and a strange obedience to a commission; for men in the midst of their own blood, and being so furiously assailed, to hold their hands, contrary to the laws of nature and necessity. And as for the duke of Parma, he was reasonably well tempted to be true to that enterprise, by no less promise than to be made a feudatary, or beneficiary king of England, under the seignory, in chief, of the pope, and the protection of the king of Spain. Besides, it appeared that the duke of Parma held his place long after in the favour and trust of the king of Spain, by the great employments and services that he performed in France: and again, it is manifest, that the duke did his best to come down and to put to sea. The truth was, that the Spanish navy, upon those proofs of fight which they had with the English, finding how much hurt they received, and how little hurt they did, by reason of the activity and low building of our ships, and skill of our seamen; and being also commanded by a general of small courage and experience, and having lost at the first two of their bravest commanders at sea, Pedro de Valdez, and Michael de Oquenda, durst not put it to a battle at sea, but set up their rest wholly upon the land enterprise. On the other side, the transporting of the land forces failed in the very foundation: for whereas the council of Spain made full account, that their navy should be master of the sea, and therefore

able to guard and protect the vessels of transportation; when it fell out to the contrary that the great navy was distressed, and had enough to do to save itself; and again, that the Hollanders impounded their land forces with a brave fleet of thirty sail, excellently well appointed; things, I say, being in this state, it came to pass that the duke of Parma must have flown if he would have come into England, for he could get neither bark nor mariner to put to sea: yet certain it is, that the duke looked still for the coming back of the Armada, even at that time when they were wandering, and making their perambulation upon the northern seas. But to return to the Armada, which we left anchored at Calais: from thence, as Sir Walter Raleigh was wont prettily to say, they were suddenly driven away with squibs; for it was no more but a stratagem of fire boats, manless, and sent upon them by the favour of the wind in the night time, that did put them in such terror, as they cut their cables, and left their anchors in the sea. After they hovered some two or three days about Graveling, and there again were beaten in a great fight; at what time our second fleet, which kept the narrow seas, was come in and joined to our main fleet. Thereupon the Spaniards entering into farther terror, and finding also divers of their ships every day to sink, lost all courage, and instead of coming up into the Thames' mouth for London, as their design was, fled on towards the north to seek their fortunes; being still chased by the English navy at the heels, until we

were fain to give them over for want of powder. The breath of Scotland the Spaniards could not endure; neither durst they as invaders land in Ireland; but only ennobled some of the coasts thereof with shipwrecks. And so going northwards aloof, as long as they had any doubt of being pursued, at last, when they were out of reach, they turned, and crossed the ocean to Spain, having lost fourscore of their ships and the greater part of their men. And this was the end of that sea-giant, the Invincible Armada: which, having not so much as fired a cottage of ours at land, nor taken a cock-boat of ours at sea, wandered through the wilderness of the northern seas; and, according to the curse in the Scripture, "came out against us one way, and fled before us seven ways;" serving only to make good the judgment of an astrologer long before given, "octogesimus octavus mirabilis annus:" or rather, to make good, even to the astonishment of all posterity, the wonderful judgments of God, poured down commonly upon vast and proud aspirings.

In the year that followed, of 1589, we gave the Spaniards no breath, but turned challengers, and invaded the main of Spain. In which enterprise, although we failed in our end, which was to settle Don Antonio in the kingdom of Portugal, yet a man shall hardly meet with an action that doth better reveal the great secret of the power of Spain; which power well sought into, will be found rather to consist in a veteran army, such as upon several occasions and pretensions they have ever had on

foot, in one part or other of Christendom, now by the space of almost sixscore years, than in the strength of their dominions and provinces. For what can be more strange, or more to the disvaluation of the power of the Spaniard upon the continent, than that with an army of eleven thousand English land soldiers, and a fleet of twenty-six ships of war, besides some weak vessels for transportation, we should, within the hour-glass of two months, have won one town of importance by scalado, battered and assaulted another, overthrown great forces in the field, and that upon the disadvantage of a bridge strongly barricadoed, landed the army in three several places of his kingdom, marched seven days in the heart of his countries, lodged three nights in the suburbs of his principal city, beaten his forces into the gates thereof, possessed two of his frontier forts, and come off after all this with small loss of men, otherwise than by sickness? And it was verily thought, that had it not been for four great disfavours of that voyage, that is to say, the failing in sundry provisions that were promised, especially of cannons for battery; the vain hopes of Don Antonio, concerning the people of the country to come in to his aid; the disappointment of the fleet that was directed to come up the river of Lisbon; and lastly, the diseases which spread in the army by reason of the heat of the season, and of the soldiers' misrule in diet, the enterprise had succeeded, and Lisbon had been carried. But howsoever it makes proof to the world, that an invasion of a few English

upon Spain may have just hope of victory, at least of passport to depart safely.

In the year 1591 was that memorable fight of an English ship called the Revenge, under the command of Sir Richard Greenvil; memorable, I say, even beyond credit, and to the height of some heroical fable: and though it were a defeat, yet it exceeded a victory; being like the act of Sampson, that killed more men at his death, than he had done in the time of all his life. This ship, for the space of fifteen hours, sat like a stag among hounds at the bay, and was sieged, and fought with, in turn, by fifteen great ships of Spain, part of a navy of fifty-five ships in all; the rest like abetters looking on afar off. And amongst the fifteen ships that fought, the great S. Philippo was one; a ship of fifteen hundred ton, prince of the twelve sea-apostles, which was right glad when she was shifted off from the Revenge. This brave ship the Revenge, being manned only with two hundred, soldiers and mariners, whereof eighty lay sick; yet nevertheless after a fight maintained, as was said, of fifteen hours, and two ships of the enemy sunk by her side, besides many more torn and battered, and great slaughter of men, never came to be entred, but was taken by composition; the enemies themselves having in admiration the virtue of the commander, and the whole tragedy of that ship.

In the year 1596 was the second invasion that we made upon the main territories of Spain; prosperously achieved by that worthy and famous Robert

earl of Essex, in concert with the noble earl of Nottingham that now liveth, then admiral. This journey was like lightning; for in the space of fourteen hours the king of Spain's navy was destroyed, and the town of Cadiz taken. The navy was no less than fifty tall ships, besides twenty galleys to attend them. The ships were straitways beaten, and put to flight with such terror, as the Spaniards in the end were their own executioners, and fired them all with their own hands. The galleys, by the benefit of the shores and shallows, got away. The town was a fair, strong, well built, and rich city; famous in antiquity, and now most spoken of for this disaster. It was manned with four thousand soldiers foot, and some four hundred horse; it was sacked and burned, though great clemency was used towards the inhabitants. But that which is no less strange than the sudden victory, is the great patience of the Spaniards; who though we stayed upon the place divers days, yet never offered us any play then, nor ever put us in suit by any action of revenge or reparation at any time after.

In the year 1600 was the battle of Newport in the Low-Countries, where the armies of the archduke, and the States, tried it out by a just battle. This was the only battle that was fought in those countries these many years. For battles in the French wars have been frequent, but in the wars of Flanders rare, as the nature of a defensive requireth. The forces of both armies were not much unequal:

that of the States exceeded somewhat in number, but that again was recompensed in the quality of the soldiers; for those of the Spanish part were of the flower of all their forces. The archduke was the assailant, and the preventer, and had the fruit of his diligence and celerity. For he had charged certain companies of Scotish men, to the number of eight hundred, sent to make good a passage, and thereby severed from the body of the army, and cut them all in pieces: for they, like a brave infantry, when they could make no honourable retreat, and would take no dishonourable flight, made good the place with their lives. This entrance of the battle did whet the courage of the Spaniards, though it dulled their swords: so as they came proudly on, confident to defeat the whole army. The encounter of the main battle which followed, was a just encounter, not hastening to a sudden rout, nor the fortune of the day resting upon a few former ranks, but fought out to the proof by several squadrons, and not without variety of success; "Stat pedi pes "densusque viro vir." There fell out an error in the Dutch army, by the overhasty medly of some of their men with the enemies, which hindred the playing of their great ordnance. But the end was that the Spaniards were utterly defeated, and near five thousand of their men in the fight, and in the execution, slain and taken; amongst whom were many of the principal persons of their army. The honour of the day was both by the enemy and the Dutch themselves, ascribed unto the English; of

whom sir Francis Vere, in a private commentary which he wrote of that service, leaveth testified, that of fifteen hundred in number, for they were no more, eight hundred were slain in the field: and, which is almost incredible in a day of victory, of the remaining seven hundred, two men only came off unhurt. Amongst the rest sir Francis Vere himself had the principal honour of the service, unto whom the prince of Orange, as is said, did transmit the direction of the army for that day; and in the next place sir Horace Vere his brother, that now liveth, who was the principal in the active part. The service also of sir Edward Cecil, sir John Ogle, and divers other brave gentlemen, was eminent.

In the year 1601 followed the battle of Kinsale in Ireland. By this Spanish invasion of Ireland, which was in September that year, a man may guess how long time a Spaniard will live in Irish ground; which is a matter of a quarter of a year, or four months at most. For they had all the advantages in the world; and no man would have thought, considering the small forces employed against them, that they could have been driven out so soon. They obtained, without resistance, in the end of September, the town of Kinsale; a small garrison of one hundred and fifty English leaving the town upon the Spaniards' approach, and the townsmen receiving the foreigners as friends. The number of Spaniards that put themselves into Kinsale, was two thousand men, soldiers of old bands, under the command of Don John d'Aquila, a man of

good valour. The town was strong of itself; neither wanted there any industry to fortify it on all parts, and make it tenable, according to the skill and discipline of Spanish fortification. At that time the rebels were proud, being encouraged upon former successes; for though the then deputy, the lord Mountjoy, and sir George Carew, president of Munster, had performed divers good services to their prejudice; yet the defeat they had given the English at Blackwater, not long before, and their treaty, too much to their honour, with the earl of Essex, was yet fresh in their memory. The deputy lost no time, but made haste to have recovered the town before new succours came, and sat down before it in October, and laid siege to it by the space of three winter months or more: during which time sallies were made by the Spaniard, but they were beaten in with loss. In January came fresh succours from Spain, to the number of two thousand more, under the conduct of Alonzo d'Ocampo. Upon the comforts of these succours, Tyrone and Odonnell drew up their forces together, to the number of seven thousand, besides the Spanish regiments, and took the field, resolved to rescue the town, and to give the English battle. So here was the case: an army of English, of some six thousand, wasted and tired with a long winter's siege, engaged in the midst, between an army of a greater number than themselves, fresh and in vigour, on the one side; and a town strong in fortification, and strong in men, on the other. But what was the event? This in few words: that

after the Irish and Spanish forces had come on, and shewed themselves in some bravery, they were content to give the English the honour as to charge them first; and when it came to the charge, there appeared no other difference between the valour of the Irish rebels and the Spaniards, but that the one ran away before they were charged, and the other straight after. And again, the Spaniards that were in the town had so good memories of their losses in their former sallies, as the confidence of an army, which came for their deliverance, could not draw them forth again. To conclude: there succeeded an absolute victory for the English, with the slaughter of above two thousand of the enemy; the taking of nine ensigns, whereof six Spanish; the taking of the Spanish general, d'Ocampo, prisoner; and this with the loss of so few of the English as is scarce credible; being, as hath been rather confidently than credibly reported, but of one man, the cornet of sir Richard Greame; though not a few hurt. There followed immediately after the defeat a present yielding up of the town by composition; and not only so, but an avoiding, by express articles of treaty accorded, of all other Spanish forces throughout all Ireland, from the places and nests where they had settled themselves in greater strength, as in regard of the natural situation of the places, than that was of Kinsale; which were Castlehaven, Baltimore, and Beerehaven. Indeed they went away with sound of trumpet, for they did nothing but publish and trumpet all the reproaches they could

devise, against the Irish land and nation; insomuch as d'Aquila said in open treaty, that when the devil upon the mount did shew Christ all the kingdoms of the earth, and the glory of them, he did not doubt but the devil left out Ireland, and kept it for himself.

I cease here; omitting not a few other proofs of the English valour and fortunes, in these latter times: as at the suburbs of Paris, at the Raveline, at Druse in Normandy, some encounters in Britanny, and at Ostend, and divers others; partly because some of them have not been proper encounters between the Spaniards and the English; and partly because others of them have not been of that greatness, as to have sorted in company with the particulars formerly recited. It is true, that amongst all the late adventures, the voyage of sir Francis Drake, and sir John Hawkins into the West Indies, was unfortunate; yet in such sort as it doth not break or interrupt our prescription, to have had the better of the Spaniards upon all fights of late. For the disaster of that journey was caused chiefly by sickness; as might well appear by the deaths of both the generals, sir Francis Drake, and sir John Hawkins, of the same sickness amongst the rest. The land enterprise of Panama was an ill measured and immature counsel: for it was grounded upon a false account, that the passages towards Panama were no better fortified than Drake had left them. But yet it sorted not to any fight of importance, but to a retreat, after the English had proved the strength of their first fort, and had notice of the two other forts

beyond, by which they were to have marched. It is true, that in the return of the English fleet they were set upon by Avellaneda, admiral of twenty great ships Spanish, our fleet being but fourteen, full of sick men, deprived of their two generals by sea, and having no pretence but to journey homewards: and yet the Spaniards did but salute them, about the Cape de los Corientes, with some small offer of fight, and came off with loss; although it was such a new thing for the Spaniards to receive so little hurt upon dealing with the English, as Avellaneda made great brags of it, for no greater matter than the waiting upon the English afar off, from Cape de los Corientes to Cape Antonio; which, nevertheless, in the language of a soldier, and of a Spaniard, he called a chase.

But before I proceed farther, it is good to meet with an objection, which if it be not removed, the conclusion of experience from the time past to the time present will not be sound and perfect. For it will be said, that in the former times, whereof we have spoken, Spain was not so mighty as now it is; and England, on the other side, was more aforehand in all matters of power. Therefore let us compare with indifferency these disparities of times, and we shall plainly perceive, that they make for the advantage of England at this present time. And because we will less wander in generalities, we will fix the comparison to precise times; comparing the state of Spain and England in the year eighty-eight, with this present year that now runneth. In handling

of this point, I will not meddle with any personal comparisons of the princes, counsellors, and commanders by sea or land, that were then, and that are now, in both kingdoms, Spain and England; but only rest upon real points, for the true balancing of the state of the forces and affairs of both times. And yet these personal comparisons I omit not, but that I could evidently shew, that even in these personal respects the balance sways on our part; but because I would say nothing that may savour of a spirit of flattery or censure of the present government.

First, therefore it is certain, that Spain hath not now one foot of ground in quiet possession more than it had in eighty-eight. As for the Valtoline and the Palatinate, it is a maxim in state, that all countries of new acquest, till they be settled, are rather matters of burden than of strength. On the other side, England hath Scotland united, and Ireland reduced to obedience, and planted; which are mighty augmentations.

Secondly, in eighty-eight, the kingdom of France, able alone to counterpoise Spain itself, much more in conjunction, was torn with the party of the league, which gave law to their king, and depended wholly upon Spain. Now France is united under a valiant young king, generally obeyed if he will, kimself king of Navarre as well as of France; and that is no ways taken prisoner, though he be tied in a double chain of alliance with Spain.

Thirdly, in eighty-eight, there sat in the see of

Rome a fierce thundering frier, that would set all at six and seven; or at six and five, if you allude to his name: and though he would after have turned his teeth upon Spain, yet he was taken order with before it came to that. Now there is ascended to the papacy, a personage, that came in by a chaste election, no ways obliged to the party of the Spaniards: a man bred in ambassages and affairs of state, that hath much of the prince, and nothing of the frier; and one, that though he loves the chair of the papacy well, yet he loveth the carpet above the chair; that is, Italy, and the liberties thereof well likewise.

Fourthly, in eighty-eight, the king of Denmark was a stranger to England, and rather inclined to Spain; now the king is incorporated to the blood of England, and engaged in the quarrel of the Palatinate. Then also Venice, Savoy, and the princes and cities of Germany, had but a dull fear of the greatness of Spain, upon a general apprehension only of the spreading and ambitious designs of that nation: now that fear is sharpened and pointed by the Spaniards' late enterprises upon the Valtoline and the Palatinate, which come nearer them.

Fifthly and lastly, the Dutch, which is the Spaniards' perpetual duellist, hath now, at this present, five ships to one, and the like proportion in treasure and wealth, to that they had in eighty-eight. Neither is it possible, whatsoever is given out, that the coffers of Spain should now be fuller than they were in eighty-eight: for at that time

Spain had no other wars save those of the Low Countries, which were grown into an ordinary; now they have had coupled therewith the extraordinary of the Valtoline, and the Palatinate. And so I conclude my answer to the objection raised touching the difference of times; not entering into more secret passages of state, but keeping that character of style whereof Seneca speaketh, "plus significat quam "loquitur."

Here I would pass over from matter of experience, were it not that I held it necessary to discover a wonderful erroneous observation that walketh about, and is commonly received, contrary to all the true account of time and experience. It is, that the Spaniard, where he once getteth in, will seldom or never be got out again. But nothing is less true than this. Not long since they got footing at Brest, and some other parts in French Britain, and after quitted them. They had Calais, Ardes, and Amiens, and rendered them, or were beaten out. They had since Marseilles, and fairly left it. They had the other day the Valtoline, and now have put it in deposit. What they will do with Ormus, which the Persian hath taken from them, we shall see. So that, to speak truly of latter times, they have rather poached and offered at a number of enterprises, than maintained any constantly; quite contrary to that idle tradition. In more ancient times, leaving their purchases in Afric, which they after abandoned, when their great emperor Charles had clasped Germany almost in his fist, he was forced, in the end, to go

from Isburg, and, as if it had been in a mask, by torchlight, and to quit every foot in Germany round that he had gotten; which, I doubt not, will be the hereditary issue of this late purchase of the Palatinate. And so I conclude the ground that I have to think that Spain will be no overmatch to Great Britain, if his majesty should enter into a war, out of experience, and records of time.

For grounds of reason, they are many; I will extract the principal, and open them briefly, and, as it were, in the bud. For situation, I pass it over; though it be no small point: England, Scotland, Ireland, and our good confederates the United Provinces, lie all in a plump together, not accessible but by sea, or at least by passing of great rivers, which are natural fortifications. As for the dominions of Spain, they are so scattered, as it yieldeth great choice of the scenes of the war, and promiseth slow succours unto such part as shall be attempted. There be three main parts of military puissance, men, money, and confederates. For men, there are to be considered valour and number. Of valour I speak not; take it from the witnesses that have been produced before: yet the old observation is not untrue, that the Spaniard's valour lieth in the eye of the looker on; but the English valour lieth about the soldier's heart. A valour of glory, and a valour of natural courage, are two things. But let that pass, and let us speak of number: Spain is a nation thin sown of people; partly by reason of the sterility of the soil, and partly because their natives

are exhausted by so many employments in such vast territories as they possess. So that it hath been accounted a kind of miracle, to see ten or twelve thousand native Spaniards in an army. And it is certain, as we have touched it, a little before, in passage, that the secret of the power of Spain consisteth in a veteran army, compounded of miscellany forces of all nations, which for many years they have had on foot upon one occasion or other: and if there should happen the misfortune of a battle, it would be a long work to draw on supplies. They tell a tale of a Spanish ambassador that was brought to see the treasury of S. Mark at Venice, and still he looked down to the ground; and being asked, why he so looked down, said, "he was looking to see whether "their treasure had any root, so that if it were spent "it would grow again; as his master's had." But, howsoever it be of their treasure, certainly their forces have scarce any root; or at least such a root as buddeth forth poorly and slowly. It is true they have the Walloons, who are tall soldiers, yet that is but a spot of ground. But, on the other side, there is not in the world again such a spring and seminary of brave military people, as is England, Scotland, Ireland, and the United Provinces: so as if wars should mow them down never so fast, yet they may be suddenly supplied, and come up again.

For money, no doubt it is the principal part of the greatness of Spain; for by that they maintain their veteran army: and Spain is the only state of Europe that is a money grower. But in this part,

of all others, is most to be considered, the ticklish and brittle state of the greatness of Spain. Their greatness consisteth in their treasure, their treasure in their Indies, and their Indies, if it be well weighed, are indeed but an accession to such as are masters by sea. So as this axle-tree, whereupon their greatness turneth, is soon cut in two by any that shall be stronger than they by sea. Herein therefore I refer myself to the opinions of all men, enemies or whomsoever, whether that the maritime forces of Great Britain, and the United Provinces, be not able to beat the Spaniard at sea? For if that be so, the links of that chain whereby they hold their greatness are dissolved. Now if it be said, that admit the case of Spain to be such as we have made it, yet we ought to descend into our own case, which we shall find, perhaps, not to be in state, for treasure, to enter into a war with Spain. To which I answer; I know no such thing; the mint beateth well; and the pulses of the people's hearts beat well. But there is another point that taketh away quite this objection: for whereas wars are generally causes of poverty or consumption; on the contrary part, the special nature of this war with Spain, if it be made by sea, is like to be a lucrative and restorative war. So that, if we go roundly on at the first, the war in continuance will find itself. And therefore you must make a great difference between Hercules' labours by land, and Jason's voyage by sea for the golden fleece.

For confederates; I will not take upon me the

knowledge, how the princes, states, and councils of Europe, at this day, stand affected towards Spain; for that trencheth into the secret occurrents of the present time, wherewith, in all this treatise, I have forborn to meddle. But to speak of that which lieth open and in view; I see much matter of quarrel and jealousy, but little of amity and trust towards Spain, almost in all other estates. I see France is in competition with them for three noble portions of their monarchy, Navarre, Naples, and Milan; and now freshly in difference with them about the Valtoline. I see once in thirty or forty years cometh a pope, that casteth his eye upon the kingdom of Naples, to recover it to the church: as it was in the minds of Julius the second, Paul the fourth, and Sixtus the fifth. As for that great body of Germany, I see they have greater reason to confederate themselves with the kings of France, and Great Britain, or Denmark, for the liberty of the German nation, and for the expulsion of Spanish and foreign forces, than they had in the years 1552 and 1553. At which time they contracted a league with Henry the second the French king, upon the same articles, against Charles the fifth, who had impatronized himself of a great part of Germany, through the discord of the German princes, which himself had sown and fomented: which league at that time did the deed, and drave out all the Spaniards out of that part of Germany; and reintegrated that nation in their ancient liberty and honour. For the West-Indies, though Spain hath had yet not much actual

disturbance there, except it have been from England; yet nevertheless I see all princes lay a kind of claim unto them; accounting the title of Spain but as a monopoly of those large countries, wherein they have in great part but an imaginary possession. For Afric upon the west, the Moors of Valentia expulsed, and their allies, do yet hang as a cloud or storm over Spain. Gabor on the east is like an anniversary wind, that riseth every year upon the party of Austria. And Persia hath entered into hostility with Spain, and giveth them the first blow by taking of Ormus. It is within every man's observation also, that Venice doth think their state almost on fire, if the Spaniards hold the Valtoline. That Savoy hath learned by fresh experience, that alliance with Spain is no security against the ambition of Spain; and that of Bavaria hath likewise been taught, that merit and service doth oblige the Spaniard but from day to day. Neither do I say for all this, but that Spain may rectify much of this ill blood by their particular and cunning negociations: but yet there it is in the body, and may break out, no man, knoweth when, into ill accidents: and at least it sheweth plainly, that which serveth for our purpose, that Spain is much destitute of assured and confident confederates. And therefore I will conclude this part with the speech of a counsellor of state in Spain at this day which was not without salt: he said to his master the king of Spain that now is, upon occasion; "Sir, I will tell your majesty "thus much for your comfort; your majesty hath "but two enemies, whereof the one is all the world,

"and the other is your own ministers." And thus I end the second main part I propounded to speak of; which was, the balancing of the forces between the king's majesty and the king of Spain, if a war must follow.

THE FIRST COPY OF MY DISCOURSE TOUCHING THE SAFETY OF THE QUEEN'S PERSON.*

THESE be the principal remedies, I could think of, for extirpating the principal cause of those conspiracies, by the breaking the nest of those fugitive traitors, and the filling them full of terror, despair, jealousy, and revolt. And it is true, I thought of some other remedies, which, because in mine own conceit I did not so well allow, I therefore do forbear to express. And so likewise I have thought, and thought again, of the means to stop and divert as well the attempts of violence, as poison, in the performance and execution. But not knowing how my travel may be accepted, being the unwarranted wishes of a private man, I leave; humbly praying her majesty's pardon, if in the zeal of my simplicity I have roved at things above my aim.

THE FIRST FRAGMENTS OF A DISCOURSE, TOUCHING INTELLIGENCE, AND THE SAFETY OF THE QUEEN'S PERSON.†

THE first remedy, in my poor opinion, is that against which, as I conceive, least exception can be

* From the original in the Lambeth Library.

† From the original in the Lambeth Library.

taken, as a thing without controversy, honourable and politic; and that is reputation of good intelligence. I say not only good intelligence, but the reputation and fame thereof. For I see, that where booths are set for watching thievish places, there is no more robbing: and though no doubt the watchmen many times are asleep, or away; yet that is more than the thief knoweth; so as the empty booth is strength and safe guard enough. So likewise, if there be sown an opinion abroad, that her majesty hath much secret intelligence, and that all is full of spies and false brethren; the fugitives will grow into such a mutual jealousy and suspicion one of another, as they will not have the confidence to conspire together, not knowing whom to trust; and thinking all practice bootless, as that which is assured to be discovered. And to this purpose, to speak reverently, as becometh me, as I do not doubt but those honourable counsellors, to whom it doth appertain, do carefully and sufficiently provide and take order that her majesty receive good intelligence; so yet, under correction, methinks it is not done with that glory and note to the world, which was in Mr. Secretary Walsingham's * time: and in this case, as was said, "opinio veritate major."

* Who died April 6, 1590. After his death the business of secretary of state appears to be chiefly done by Mr. Robert Cecil, who was knighted by Queen Elizebeth at Theobald's, about the beginning of June, 1591, and in August following sworn of the privy-council; but not actually appointed secretary of state till July 5, 1596. BIRCH.

The second remedy I deliver with less assurance, as that which is more removed from the compass of mine understanding: and that is, to treat and negociate with the King of Spain, or Archduke Ernest,* who resides in the place where these conspiracies are most forged, upon the point of the law of nations, upon which kind of points princes' enemies may with honour negociate, viz. that, contrary to the same law of nations, and the sacred dignity of kings, and the honour of arms, certain of her majesty's subjects, if it be not thought meet to impeach any of his ministers, refuged in his dominions, have conspired and practised assassination against her majesty's person.

* Ernest, Archduke of Austria, son of the Emperor Maximilian II. and governor of the Low Countries, upon which government he entered in June, 1594; but held it only a short time, dying February $\frac{11}{21}$ following. It was probably in pursuance of the advice of Mr. Francis Bacon in this paper, that Queen Elizabeth sent to the Archduke in 1594, to complain of the designs which had been formed against her life by the Count de Fuentes, and Don Diego de Ibarra, and other Spanish ministers concerned in governing the Low Countries after the death of Alexander Duke of Parma in December, 1592, and by the English fugitives there; and to desire him to signify those facts to the king of Spain, in order that he might vindicate his own character, by punishing his ministers, and delivering up to her such fugitives as were parties in such designs. *Camdeni Annales Eliz. Reginæ*, p. 625. Edit. Lugduni Bat. 1625. BIRCH.

A TRUE REPORT

OF

THE DETESTABLE TREASON,

INTENDED BY

DOCTOR RODERIGO LOPEZ,

A PHYSICIAN ATTENDING UPON THE PERSON OF THE QUEEN'S MAJESTY,

WHOM HE, FOR A SUM OF MONEY, PROMISED TO BE PAID HIM BY THE KING OF SPAIN, DID UNDERTAKE TO HAVE DESTROYED BY POISON; WITH CERTAIN CIRCUMSTANCES BOTH OF THE PLOTTING AND DETECTING OF THE SAID TREASON.

[Penned during the Queen's Life.]

THE king of Spain having found, by the enterprise of 88, the difficulty of an invasion of England, and having also since that time embraced the matters of France, being a design of a more easy nature, and better prepared to his hand, hath of necessity for a time laid aside the prosecution of his attempts against this realm, by open forces, as knowing his means unable to wield both actions at once, as well that of England as that of France; and therefore, casting at the fairest, hath, in a manner, bent his whole strength upon France, making, in the mean time, only a defensive war upon the Low Countries. But finding again, that the supports and aids which her majesty hath continued to the French king, are a principal impediment and retardation to his prevailing there according to his ends, he hath, now of late, by all means, projected to trouble the waters here,

and to cut us out some work at home; that by practice, without diverting and employing any great forces, he might nevertheless divert our succours from France.

According to which purpose, he first proved to move some innovation in Scotland, not so much in hope to alienate the king from the amity of her majesty, as practising to make a party there against the king himself, whereby he should be compelled to use her majesty's forces for his assistance. Then he solicited a subject within this realm, being a person of great nobility, to rise in arms and levy war against her majesty; which practice was by the same nobleman loyally and prudently revealed. And lastly, rather, as it is to be thought, by the instigation of our traitorous fugitives in foreign parts, and the corrupter sort of his counsellors and ministers, than of his own nature and inclination, either of himself, or his said counsellors and ministers using his name, have descended to a course against all honour, all society and humanity, odious to God and man, detested by the heathens themselves, which is, to take away the life of her majesty, (which God have in his precious custody!) by violence or poison. A matter which might be proved to be not only against all Christianity and religion, but against nature, the law of nations, the honour of arms, the civil law, the rules of morality and policy; finally, to be the most condemned, barbarous, and ferine act that can be imagined; yea, supposing the quarrels and hostility between the princes to be never so declared

and so mortal, yet were it not that it would be a very reproach unto the age, that the matter should be once disputed or called in question, it could never be defended. And therefore I leave it to the censure which Titus Livius giveth in the like case upon Perseus, the last king of the Macedons, afterwards overthrown, taken with his children, and led in triumph by the Romans; "Quem non justum bellum "gerere regio animo, sed per omnia clandestina "grassari scelera, latrociniorum ac veneficiorum, cer- "nebant."

But to proceed: certain it is, that even about this present time there have been suborned and sent into this realm divers persons, some English, some Irish, corrupted by money and promises, and resolved and conjured by priests in confession, to have executed that most wretched and horrible fact; of which number certain have been taken, and some have suffered, and some are spared because they have with great sorrow confessed these attempts, and detested their suborners. And if I should conjecture what the reason is why this cursed enterprise was at this time so hotly and with such diligence pursued, I take it to be chiefly because the matters of France were ripe, and the king of Spain made himself ready to unmask himself, and to reap that in France, which he had been long in sowing, in regard that, there being like to be a divulsion in the league by the reconciliation of some of the heads to the king, the more passionate sort, being destituted by their associates, were like to cast themselves wholly

into the king of Spain's arms, and to dismember some important piece of that crown; though now upon this fresh accident of receiving the king into Paris, it is to be thought that both the worst affected of the league will submit themselves upon any tolerable conditions to their natural king, thus advanced in strength and reputation; and the king of Spain will take a second advice ere he embark himself too far in any new attempt against France. But taking the affairs as they then stood before this accident unexpected, especially of the council of Spain, during this his supposed harvest in France, his council had reason to wish that there were no disturbance from hence, where they make account that if her majesty were removed, upon whose person God continue his extraordinary watch and providence! here would be nothing but confusion, which they do not doubt but with some no great treasure, and forces from without, may be nourished till they can more fully intend the ruin of this state, according to their ancient malice.

But howsoever that be, amongst the number of these execrable undertakers, there was none so much built and relied upon by the great ones of the other side, as was this physician Lopez; nor, indeed, none so dangerous; whether you consider the aptness of the instrument, or the subtlety and secrecy of those that practised with him, or the shift and evasion which he had provided for a colour of his doings, if they should happen to come into question. For first, whereas others were to find and encounter

infinite difficulties, in the very obtaining of an opportunity to execute this horrible act; and, besides, cannot but see present and most assured death before their eyes, and therefore must be, as it were, damnable votaries if they undertake it: this man, in regard of his faculty, and of his private access to her majesty, had both means to perpetrate, and means to conceal, whereby he might reap the fruit of his wicked treason without evident peril. And for his complices that practised with him, being Portuguese, and of the retinue of king Antonio, the king of Spain's mortal enemy, they were men thereby freed and discharged from suspicion, and might send letters and receive letters out of Spain without jealousy; as those which were thought to entertain intelligences there for the good of their master. And for the evasion and mask that Lopez had prepared for this treason, if it had not been searched and sifted to the bottom, it was, that he did intend but to cozen the king of Spain, without ill meaning; somewhat in the nature of that stratagem which Parry, a most cunning and artificial traitor, had provided for himself.

Nevertheless this matter, by the great goodness of God, falling into good hands, of those honourable and sufficient persons which dealt therein, was by their great and worthy industry so handled and followed, as this Proteus of a disguised and transformed treason did at last appear in his own likeness and colours, which were as foul and monstrous as have been known in the world. For some of her

majesty's council long since entered into consideration, that the retinue of king Antonio, I mean some of them, were not unlike to hatch these kinds of treasons, in regard they were needy strangers, entered into despair of their master's fortune, and like enough to aspire to make their peace at home, by some such wicked services as these; and therefore grew to have an extraordinary vigilant eye upon them: which prudent and discreet presumption, or conjecture, joined with some advertisements of espials abroad, and some other industry, was the first cause, next under the great benediction of God, which giveth unto princes zealous counsellors, and giveth to counsellors policy, and discerning thoughts, of the revealing and discovering of these treasons, which were contrived in order and form, as hereafter is set down.

This Lopez, of nation a Portuguese, and suspected to be in sect secretly a Jew, though here he conformed himself to the rites of the Christian religion, for a long time professed physic in this land, by occasion whereof, being withal a man very observant and officious, and of a pleasing and appliable behaviour; in that regard, rather than for any great learning in his faculty, he grew known and favoured in court, and was some years since sworn physician of her majesty's household; and by her majesty's bounty, of whom he had received divers gifts of good commodity, was grown to good estate of wealth.

This man had insinuated himself greatly, in

regard he was of the same nation, with the king Antonio, whose causes he pretended to solicit at the court: especially while he supposed there was any appearance of his fortune; of whom also he had obtained, as one that referred all his doings to gain, an assignation of 50,000 crowns to be levied in Portugal. But being a person wholly of a corrupt and mercenary nature, and finding his hopes cold from that part; he cast his eyes upon a more able paymaster, and secretly made offer long since of his service to the king of Spain: and accordingly gave sundry intelligences of that which passed here, and imported most for the king of Spain to know, having no small means, in regard of his continual attendance at court, nearness and access, to learn many particulars of great weight: which intelligences he maintained with Bernardine Mendoza, Antonio Vega, Roderigo Marquez, and divers others.

In the conveyance of which his intelligences, and in the making known of his disposition to do the king of Spain service, he had, amongst others, one Manuel Andrada a Portuguese, revolted from Don Antonio to the king of Spain; one that was discovered to have practised the death of the said Don Antonio, and to have betrayed him to Bernardine Mendoza. This man coming hither, was, for the same, his practice appearing by letters intercepted, apprehended and committed to prison. Before which time also, there had been by good diligence intercepted other letters, whereby the said Andrada advertised Mendoza, that he had won

Dr. Lopez to the king's service: but Lopez having understanding thereof, and finding means to have secret conference with Andrada before his examination, persuaded with him to take the matter upon himself, as if he had invented that advertisement touching Lopez, only to procure himself credit with Mendoza; and to make him conceive well of his industry and service. And to move him hereunto, Lopez set before Andrada, that if he did excuse him, he should have credit to work his delivery: whereas, if he did impeach him, he was not like to find any other means of favour. By which subtle persuasion Andrada, when he came to be examined, answered according to the direction and lessoning which Lopez had given him. And having thus acquitted himself of this suspicion, became suitor for Andrada's delivery, craftily suggesting, that he was to do some notable service to Don Antonio; in which his suit he accordingly prevailed. When Lopez had thus got Andrada out of prison, he was suffered to go out of the realm into Spain; in pretence, as was said, to do some service to Don Antonio; but in truth, to continue Lopez's negociation and intelligences with the king of Spain, which he handled so well, as at his return hither, for the comforting of the said Lopez, he brought to him from the king, besides thanks and words of encouragement, and an abrazo, which is the compliment of favour, a very good jewel garnished with sundry stones of good value. This jewel, when Lopez had accepted, he cunningly cast with himself, that if he should offer

it to her majesty first, he was assured she would not take it: next, that thereby he should lay her asleep, and make her secure of him for greater matters, according to the saying, "Fraus sibi fidem "in parvis præstruit ut in magnis opprimat;" which accordingly he did, with protestations of his fidelity: and her majesty, as a princess of magnanimity, not apt to fear or suspicion, returned it to him with gracious words.

After Lopez had thus abused her majesty, and had these trials of the fidelity of Andrada, they fell in conference, the matter being first moved by Andrada, as he that came freshly out of Spain, touching the empoisoning of the queen: which Lopez, who saw that matter of intelligence, without some such particular service, would draw no great reward from the king of Spain; such as a man that was not needy, but wealthy as he was, could find any taste in, assented unto. And to that purpose procured again this Andrada to be sent over, as well to advertise and assure this matter to the king of Spain and his ministers, namely, to the count de Fuentes, assistant to the general of the king of Spain's forces in the Low Countries, as also to capitulate and contract with him about the certainty of his reward. Andrada having received those instructions, and being furnished with money, by Lopez's procurement, from Don Antonio, about whose service his employment was believed to be, went over to Calais, where he remained to be near unto England and Flanders, having a boy that

ordinarily passed to and fro between him and Lopez: by whom he did also, the better to colour his employment, write to Lopez intelligence, as it was agreed he should between him and Lopez; who bad him send such news as he should take up in the streets. From Calais he writeth to count de Fuentes of Lopez's promise and demands. Upon the receipt of which letters, after some time taken to advertise this proposition into Spain, and to receive direction thereupon, the count de Fuentes associated with Stephano Ibarra, secretary of the council of the wars in the Low Countries, calleth to him one Manuel Louis Tinoco, a Portuguese, who had also followed king Antonio, and of whose good devotion he had had experience, in that he had conveyed unto him two several packets, wherewith he was trusted by the king Antonio for France. Of this Louis the first received a corporal oath, with solemn ceremony, taking his hands between their hands, that he should keep secret that which should be imparted to him, and never reveal the same, though he should be apprehended and questioned here. This done, they acquaint him with the letters of Andrada, with whom they charge him to confer at Calais in his way, and to pass to Lopez into England, addressing him farther to Stephano Ferrera de Gama, and signifying unto the said Lopez withal, as from the king, that he gave no great credence to Andrada, as a person too slight to be used in a cause of so great weight: and therefore marvelled much that he heard nothing from Ferrera of this matter, from

whom he had in former time been advertised in generality of Lopez's good affection to do him service. This Ferrera had been sometimes a man of great livelihood and wealth in Portugal, which he did forego in adhering to Don Antonio, and appeareth to be a man of capacity and practice; but hath some years since been secretly won to the service of the king of Spain, not travelling nevertheless to and fro, but residing as his lieger in England.

Manuel Louis dispatched with these instructions, and with all affectionate commendations from the count to Lopez, and with letters to Ferrera, took his journey first to Calais, where he conferred with Andrada; of whom receiving more ample information, together with a short ticket of credence to Lopez, that he was a person whom he might trust without scruple, came over into England, and first repaired to Ferrera, and acquainted him with the state of the business, who had before that time given some light unto Lopez, that he was not a stranger unto the practice between him and Andrada, wherewith, indeed, Andrada had in a sort acquainted him. And now upon this new dispatch and knowledge given to Lopez of the choice of Ferrera to continue that which Andrada had begun; he, to conform himself the better to the satisfaction of the king of Spain, and his ministers abroad, was content more fully to communicate with Ferrera, with whom, from that time forward, he meant singly and apertly to deal; and therefore cunningly forbore to speak with Manuel Louis himself; but concluded that

Ferrera should be his only trunk, and all his dealings should pass through his hands, thinking thereby to have gone invisible.

Whereupon he cast with himself, that it was not safe to use the mediation of Manuel Louis, who had been made privy to the matter, as some base carrier of letters; which letters also should be written in a cipher, not of alphabet, but of words; such as might, if they were opened, import no vehement suspicion. And therefore Manuel Louis was sent back with a short answer, and Lopez purveyed himself of a base fellow, a Portuguese called Gomez d'Avila, dwelling hard by Lopez's house, to convey his letters. After this messenger provided, it was agreed between Lopez and Ferrera, that letters should be sent to the count de Fuentes, and secretary Juarra, written and signed by Ferrera, for Lopez cautelously did forbear to write himself, but directed, and indeed dictated word by word by Lopez himself. The contents thereof were, that Lopez was ready to execute that service to the king, which before had been treated, but required for his recompence the sum of 50,000 crowns, and assurance for the same.

These letters were written obscurely, as was touched, in terms of merchandise; to which obscurity when Ferrera excepted, Lopez answered, they knew his meaning by that which had passed before. Ferrera wrote also to Manuel Louis, but charged this Gomez to deliver the same letters unto him in the presence of Juarra; as also the letter to Juarra in the presence of Manuel Louis. And these letters

were delivered to Gomez d'Avila to be carried to Brussels, and a passport procured, and his charges defrayed by Lopez. And Ferrera, the more to approve his industry, writ letters two several times, the one conveyed by Emanuel Pallacios, with the privity of Lopez, to Christophero Moro, a principal counsellor of the king of Spain, in Spain; signifying that Lopez was won to the king of Spain, and that he was ready to receive his commandment; and received a letter from the same Christophero Moro, in answer to one of these, which he shewed unto Lopez. In the mean time Lopez, though a man, in semblance, of a heavy wit, yet indeed subtle of himself, as one trained in practice, and besides as wily as fear and covetousness could make him, thought to provide for himself, as was partly touched before, as many starting holes and evasions as he could devise, if any of these matters should come to light. And first he took his time to cast forth some general words afar off to her majesty, as asking her the question, Whether a deceiver might not be deceived? Whereof her majesty, not imagining these words tended to such end, as to warrant him colourably in this wretched conspiracy, but otherwise, of her own natural disposition bent to integrity and sincerity, uttered dislike and disallowance. Next, he thought he had wrought a great mystery in demanding the precise sum of 50,000 crowns, agreeing just with the sum of assignation or donation from Don Antonio; idly, and in that grossly imagining, that, if afterwards he should accept the same sum, he might

excuse it, as made good by the king of Spain, in regard he desisted to follow and favour Don Antonio; whereupon the king of Spain was in honour tied not to see him a loser. Thirdly, in his conferences with Ferrera, when he was apposed upon the particular manner how he would poison her majesty, he purposely named unto him a syrup, knowing that her majesty never useth syrup; and therefore thinking that would prove an high point for his justification, if things should come in any question.

But all this while desirous after his prey, which he had in hope devoured, he did instantly importune Ferrera for the answering of his last dispatch, finding the delay strange, and reiterating the protestations of his readiness to do the service, if he were assured of his money.

Now before the return of Gomez d'Avila into England, this Stephen Ferrera was discovered to have intelligence with the enemy; but so as the particular of his traffic and overtures appeared not, only it seemed there was great account made of that he managed: and thereupon he was committed to prison. Soon after arrived Gomez d'Avila, and brought letters only from Manuel Louis, by the name of Francisco de Thores; because, as it seemeth, the great persons on the other side had a contrary disposition to Lopez, and liked not to write by so base a messenger, but continued their course to trust and employ Manuel Louis himself, who in likelihood was retained till they might receive a full conclusion

from Spain; which was not till about two months after. This Gomez was apprehended at his landing, and about him were found the letters aforesaid, written in jargon, or verbal cipher, but yet somewhat suspicious, in these words: "This bearer will "tell you the price in which your pearls are esteemed, "and in what resolution we rest about a little "musk and amber, which I am determined to buy." Which words the said Manuel Louis afterwards voluntarily confessed to be deciphered in this sort; That by the allowance of the pearls he meant, that the count de Fuentes, and the secretary, did gladly accept the offer of Lopez to poison the queen, signified by Ferrera's letter: and for the provision of amber and musk, it was meant, that the count looked shortly for a resolution from the king of Spain concerning a matter of importance, which was for burning of the queen's ships; and another point tending to the satisfaction of their vindictive humour.

But while the sense of this former letter rested ambiguous, and that no direct particular was confessed by Ferrera, nor sufficient light given to ground any rigorous examination of him, cometh over Manuel Louis with the resolution from Spain; who first understanding of Ferrera's restraint, and therefore doubting how far things were discovered, to shadow the matter, like a cunning companion, gave advertisement of an intent he had to do service, and hereupon obtained a passport: but after his coming in, he made no haste to reveal any thing, but thought to dally and abuse in some other sort. And while

the light was thus in the clouds, there was also intercepted a little ticket which Ferrera in prison had found means to write, in care to conceal Lopez, and to keep him out of danger, to give a caveat of staying all farther answers and advertisements in these causes. Whereupon Lopez was first called in question.

But in conclusion, this matter being with all assiduity and policy more and more pierced and mined into, first, there was won from Manuel Louis his letters from the count de Fuentes and secretary Juarra to Ferrera, in both which mention is made of the queen's death; in that of the count's, under the term of a commission; and in that of the secretary's, under the term of the great service, whereof should arise an universal benefit to the whole world. Also the letters of credit written by Gonsalo Gomez, one to Pedro de Carrera, and the other to Juan Pallacio, to take up a sum of money by Manuel Louis, by the foresaid false name of Fr. de Thores; letters so large, and in a manner without limitation, as any sum by virtue thereof might be taken up: which letters were delivered to Louis by the count de Fuentes's own hands, with directions to shew them to Lopez for his assurance; a matter of God's secret working in staying the same, for thereupon rested only the execution of the fact of Lopez. Upon so narrow a point consisted the safety of her majesty's life, already sold by avarice to malice and ambition, but extraordinarily preserved by that watchman which never slumbereth. This same

Manuel Louis, and Stephen Ferrera also, whereof the one managed the matter abroad, and the other resided here to give correspondence, never meeting after Manuel had returned, severally examined without torture or threatening, did in the end voluntarily and clearly confess the matters above-mentioned, and in their confessions fully consent and concur, not only in substance, but in all points, particularities, and circumstances; which confessions appear expressed in their own natural language, testified and subscribed with their own hands; and in open assembly, at the arraignment of Lopez in the Guildhall, were by them confirmed and avouched to Lopez his face; and therewithal are extant, undefaced, the original letters from count de Fuentes, secretary Juarra, and the rest.

And Lopez himself, at his first apprehension and examination, did indeed deny, and deny with deep and terrible oaths and execrations, the very conferences and treaties with Ferrera, or Andrada, about the empoisonment. And being demanded, if they were proved against him what he would say? he answered, That he would yield himself guilty of the fact intended. Nevertheless, being afterwards confronted by Ferrera, who constantly maintained to him all that he had said, reducing him to the times and places of the said conferences, he confessed the matter, as by his confession in writing, signed with his own hand, appeareth. But then he fell to that slender evasion, as his last refuge, that he meant only to cozen the king of Spain of the money: and

in that he continued at his arraignment, when, notwithstanding, at the first he did retract his own confession: and yet being asked, whether he was drawn, either by means of torture, or promise of life, to make the same confession? he did openly testify that no such means were used towards him.

But the falsehood of this excuse, being an allegation that any traitor may use and provide for himself, is convicted by three notable proofs. The first, that he never opened this matter, neither unto her majesty, unto whom he had ordinary access, nor to any counsellor of state, to have permission to toll on, and inveigle these parties with whom he did treat, if it had been thought so convenient; wherein, percase, he had opportunity to have done some good service, for the farther discovery of their secret machinations against her majesty's life. The second, that he came too late to this shift; having first bewrayed his guilty conscience, in denying those treaties and conferences till they were evidently and manifestly proved to his face. The third, that in conferring with Ferrera about the manner of his assurance, he thought it better to have the money in the hands of such merchants as he should name in Antwerp, than to have it brought into England; declaring his purpose to be, after the fact done, speedily to fly to Antwerp, and there to tarry some time, and so to convey himself to Constantinople; where it is affirmed, that Don Salomon, a Jew in good credit, is Lopez his near kinsman, and that he is greatly favoured by the said Don Salomon:

whereby it is evident that Lopez had cast his reckonings upon the supposition of the fact done.

Thus may appear, both how justly this Lopez* is condemned for the highest treason that can be imagined; and how, by God's marvellous goodness, her majesty hath been preserved. And surely, if a man do truly consider, it is hard to say, whether God hath done greater things by her majesty or for her: if you observe on the one side, how God hath ordained her government to break and cross the unjust ambition of the two mighty potentates, the king of Spain and the Bishop of Rome, never so straitly between themselves combined: and on the other side, how mightily God hath protected her, both against foreign invasion and inward troubles, and singularly against the many secret conspiracies that have been made against her life; thereby declaring to the world that he will indeed preserve that instrument which he hath magnified. But the corruptions of these times are wonderful, when that wars, which are the highest trials of right between princes, that acknowledge no superior jurisdiction, and ought to be prosecuted with all honour, shall be stained and infamed with such foul and inhuman practices. Wherein if so great a king hath been named, the rule of the civil law, which is a rule of common reason, must be remembered; "Frustra "legis auxilium implorat, qui in legem committit." He that hath sought to violate the majesty royal, in the highest degree, cannot claim the pre-eminence thereof to be exempted from just imputation.

* Lopez was executed 7th June, 1594.

TRACTS

RELATING TO ENGLAND.

OF THE

TRUE GREATNESS

OF

THE KINGDOM OF BRITAIN.

TO KING JAMES.

"FORTUNATOS NIMIUM SUA SI BONA NORINT."

THE greatness of kingdoms and dominions in bulk and territory doth fall under measure and demonstration that cannot err: but the just measure and estimate of the forces and power of an estate is a matter, than the which there is nothing among civil affairs more subject to error, nor that error more subject to perilous consequence. For hence may proceed many inconsiderate attempts, and insolent provocations in states that have too high an imagination of their own forces: and hence may proceed, on the other side, a toleration of many fair grievances and indignities, and a loss of many opportunities, in states that are not sensible enough of their own strength. Therefore, that it may the better appear what greatness your majesty hath obtained of God, and what greatness this island hath obtained by you, and what greatness it is, that by the gracious pleasure of Almighty God you shall leave and transmit to your children and generations as the first founder; I have thought good, as far as I can comprehend, to make a true survey and re-

presentation of the greatness of this your kingdom of Britain; being for mine own part persuaded, that the supposed prediction, "Video solem orientem "in occidente," may be no less a true vision applied to Britain, than to any other kingdom of Europe; and being out of doubt that none of the great monarchies, which in the memory of times have risen in the habitable world, had so fair seeds and beginnings as hath this your estate and kingdom, whatsoever the event shall be, which must depend upon the dispensation of God's will and providence, and his blessing upon your descendents. And because I have no purpose vainly or assentatorily to represent this greatness, as in water, which shews things bigger than they are, but rather, as by an instrument of art, helping the sense to take a true magnitude and dimension: therefore I will use no hidden order, which is fitter for insinuations than sound proofs, but a clear and open order. First by confuting the errors, or rather correcting the excesses of certain immoderate opinions, which ascribe too much to some points of greatness, which are not so essential, and by reducing those points to a true value and estimation: then by propounding and confirming those other points of greatness which are more solid and principal, though in popular discourse less observed: and incidently by making a brief application, in both these parts, of the general principles and positions of policy unto the state and condition of these your kingdoms. Of these the former part will branch itself into these articles.

First, That in the measuring or balancing of greatness, there is commonly too much ascribed to largeness of territory.

Secondly, That there is too much ascribed to treasure or riches.

Thirdly, That there is too much ascribed to the fruitfulness of the soil, or affluence of commodities.

And fourthly, That there is too much ascribed to the strength and fortification of towns or holds. The latter will fall into this distribution:

First, That true greatness doth require a fit situation of the place or region.

Secondly, that true greatness consisteth essentially in population and breed of men.

Thirdly, That it consisteth also in the valour and military disposition of the people it breedeth: and in this, that they make profession of arms.

Fourthly, That it consisteth in this point, that every common subject by the poll be fit to make a soldier, and not only certain conditions or degrees of men.

Fifthly, That it consisteth in the temper of the government fit to keep the subjects in good heart and courage, and not to keep them in the condition of servile vassals.

And sixthly, That it consisteth in the commandment of the sea.

And let no man so much forget the subject propounded, as to find strange, that here is no mention of religion, laws, or policy. For we speak of that

which is proper to the amplitude and growth of states, and not of that which is common to their preservation, happiness, and all other points of well-being. First, therefore, touching largeness of territories, the true greatness of kingdoms upon earth is not without some analogy with the kingdom of heaven, as our Saviour describes it: which he doth resemble, not to any great kernel or nut, but to one of the least grains; but yet such a one, as hath a property to grow and spread. For as for large countries and multitude of provinces, they are many times rather matters of burden than of strength, as may manifestly appear both by reason and example. By reason thus. There be two manners of securing of large territories, the one by the natural arms of every province, and the other by the protecting arms of the principal estate, in which case commonly the provincials are held disarmed. So are there two dangers incident unto every estate, foreign invasion, and inward rebellion. Now such is the nature of things, that these two remedies of estate do fall respectively into these two dangers, in case of remote provinces. For if such an estate rest upon the natural arms of the provinces, it is sure to be subject to rebellion or revolt; if upon protecting arms, it is sure to be weak against invasion: neither can this be avoided.

Now for examples, proving the weakness of states possessed of large territories, I will use only two, eminent and selected. The first shall be of the kingdom of Persia, which extended from Egypt,

inclusive, unto Bactria, and the borders of the East India; and yet nevertheless was over-run and conquered, in the space of seven years, by a nation not much bigger than this isle of Britain, and newly grown into name, having been utterly obscure till the time of Philip the son of Amyntas. Neither was this affected by any rare or heroical prowess in the conqueror, as is vulgarly conceived, for that Alexander the Great goeth now for one of the wonders of the world; for those that have made a judgment grounded upon reason of estate, do find that conceit to be merely popular, for so Livy pronounceth of him, "Nihil aliud quam bene ausus "vana contemnere." Wherein he judgeth of vastness of territory as a vanity that may astonish a weak mind, but no ways trouble a sound resolution. And those that are conversant attentively in the histories of those times, shall find that this purchase which Alexander made and compassed, was offered by fortune twice before to others, though by accident they went not through with it; namely, to Agesilaus, and Jason of Thessaly: for Agesilaus, after he had made himself master of most of the low provinces of Asia, and had both design and commission to invade the higher countries, was diverted and called home upon a war excited against his country by the states of Athens and Thebes, being incensed by their orators and counsellors, which were bribed and corrupted from Persia, as Agesilaus himself avouched pleasantly, when he said, That an hundred thousand archers of the king of Persia had driven him home:

understanding it, because an archer was the stamp upon the Persian coin of gold. And Jason of Thessaly, being a man born to no greatness, but one that made a fortune of himself, and had obtained by his own vivacity of spirit, joined with the opportunities of time, a great army compounded of voluntaries and adventurers, to the terror of all Græcia, that continually expected where that cloud would fall; disclosed himself in the end, that his design was for an expedition into Persia, the same which Alexander, not many years after achieved, wherein he was interrupted by a private conspiracy against his life, which took effect. So that it appeareth, as was said, that it was not any miracle of accident that raised the Macedonian monarchy, but only the weak composition of that vast state of Persia, which was prepared for a prey to the first resolute invader.

The second example that I will produce, is of the Roman empire, which had received no diminution in territory, though great in virtue and forces, till the time of Jovianus. For so it was alleged by such as opposed themselves to the rendering Nisibis upon the dishonourable retreat of the Roman army out of Persia. At which time it was avouched, that the Romans, by the space of eight hundred years, had never, before that day, made any cession or renunciation to any part of their territory, whereof they had once had a constant and quiet possession. And yet, nevertheless, immediately after the short reign of Jovianus, and towards the end of the joint reign of Valentinianus and Valens, which were his

immediate successors, and much more in the times succeeding, the Roman empire, notwithstanding the magnitude thereof, became no better than a carcase, whereupon all the vultures and birds of prey of the world did seize and ravine for many ages, for a perpetual monument of the essential difference between the scale of miles, and the scale of forces. And therefore, upon these reasons and examples, we may safely conclude, that largeness of territory is so far from being a thing inseparable from greatness of power, as it is many times contrariant and incompatible with the same. But to make a reduction of that error to a truth, it will stand thus, that then greatness of territory addeth strength, when it hath these four conditions:

First, That the territories be compacted, and not dispersed.

Secondly, That the region which is the heart and seat of the state, be sufficient to support those parts, which are but provinces and additions.

Thirdly, That the arms or martial virtue of the state be in some degree answerable to the greatness of dominion.

And lastly, That no part or province of the state be utterly unprofitable, but do confer some use or service to the state.

The first of these is manifestly true, and scarcely needeth any explication. For if there be a state that consisteth of scattered points instead of lines, and slender lines instead of latitudes, it can never be

solid, and in the solid figure is strength. But what speak we of mathematical principles? The reason of state is evident, that if the parts of an estate be disjoined and remote, and so be interrupted with the provinces of another sovereignty; they cannot possibly have ready succours in case of invasion, nor ready suppression in case of rebellion, nor ready recovery in case of loss or alienation by either of both means. And therefore we see what an endless work the king of Spain hath had to recover the Low Countries, although it were to him patrimony and not purchase; and that chiefly in regard of the great distance. So we see that our nation kept Calais a hundred years space after it lost the rest of France, in regard of the near situation; and yet in the end they that were nearer carried it by surprise, and over-ran succour.

Therefore Titus Quintius made a good comparison of the state of the Achaians to a tortoise, which is safe when it is retired within the shell, but if any part be put forth, then the part exposed endangereth all the rest. For so it is with states that have provinces dispersed, the defence whereof doth commonly consume and decay, and sometimes ruin the rest of the estate. And so likewise we may observe, that all the great monarchies, the Persians, the Romans, and the like of the Turks, they had not any provinces to the which they needed to demand access through the country of another: neither had they any long races or narrow angles of territory, which were environed or clasped in with foreign states; but their domi-

nions were continued and entire, and had thickness and squareness in their orb or contents. But these things are without contradiction.

For the second, concerning the proportion between the principal region, and those which are but secondary, there must evermore distinction be made between the body or stem of the tree, and the boughs and branches. For if the top be over great, and the stalk too slender, there can be no strength. Now, the body is to be accounted so much of an estate, as is not separated or distinguished with any mark of foreigners, but is united specially with the bond of naturalization; and therefore we see that when the state of Rome grew great, they were enforced to naturalize the Latins or Italians, because the Roman stem could not bear the provinces and Italy both as branches: and the like they were contented after to do to most of the Gauls. So on the contrary part, we see in the state of Lacedæmon, which was nice in that point, and would not admit their confederates to be incorporate with them, but rested upon the natural-born subjects of Sparta, how that a small time after they had embraced a larger empire, they were presently surcharged, in respect to the slenderness of the stem. For so in the defection of the Thebans and the rest against them, one of the principal revolters spake most aptly, and with great efficacy in the assembly of the associates, telling them, That the state of Sparta was like a river, which, after that it had run a great way, and taken other rivers and streams into it, ran strong

and mighty, but about the head and fountain of it was shallow and weak; and therefore advised them to assail and invade the main of Sparta, knowing they should there find weak resistance either of towns or in the field: of towns, because upon confidence of their greatness they fortified not upon the main; in the field, because their people was exhaust by garrisons and services far off. Which counsel proved sound, to the astonishment of all Græcia at that time.

For the third, concerning the proportion of the military forces of a state to the amplitude of empire, it cannot be better demonstrated than by the two first examples which we produced of the weakness of large territory, if they be compared within themselves according to difference of time. For Persia at a time was strengthened with large territory, and at another time weakened; and so was Rome. For while they flourished in arms, the largeness of territory was a strength to them, and added forces, added treasures, added reputation: but when they decayed in arms, then greatness became a burden. For their protecting forces did corrupt, supplant, and enervate the natural and proper forces of all their provinces, which relied and depended upon the succours and directions of the state above. And when that waxed impotent and slothful, then the whole state laboured with her own magnitude, and in the end fell with her own weight. And that, no question, was the reason of the strange inundations of people which both from the east and north-west

overwhelmed the Roman empire in one age of the world, which a man upon the sudden would attribute to some constellation or fatal revolution of time, being indeed nothing else but the declination of the Roman empire, which having effeminated and made vile the natural strength of the provinces, and not being able to supply it by the strength imperial and sovereign, did, as a lure cast abroad, invite and entice all the nations adjacent, to make their fortunes upon her decays. And by the same reason, there cannot but ensue a dissolution to the state of the Turk, in regard of the largeness of empire, whensoever their martial virtue and discipline shall be further relaxed, whereof the time seemeth to approach. For certainly like as great stature in a natural body is some advantage in youth, but is but burden in age; so it is with great territory, which when a state beginneth to decline, doth make it stoop and buckle so much the faster.

For the fourth and last, it is true, that there is to be required and expected as in the parts of a body, so in the members of a state, rather propriety of service, than equality of benefit. Some provinces are more wealthy, some more populous, and some more warlike; some situate aptly for the excluding or expulsing of foreigners, and some for the annoying and bridling of suspected and tumultuous subjects; some are profitable in present, and some may be converted and improved to profit by plantations and good policy. And therefore true consideration of estate can hardly find what to reject, in matter of

territory, in any empire, except it be some glorious acquests obtained sometime in the bravery of wars, which cannot he kept without excessive charge and trouble; of which kind were the purchases of king Henry VIII. that of Tournay; and that of Bologne; and of the same kind are infinite other the like examples almost in every war, which for the most part upon treaties of peace are restored.

Thus have we now defined where the largeness of territory addeth true greatness, and where not. The application of these positions unto the particular or supposition of this your majesty's kingdom of Britain, requireth few words. For, as I professed in the beginning, I mean not to blazon or amplify, but only to observe and express matter.

First, Your majesty's dominion and empire comprehendeth all the islands of the north-west ocean, where it is open, until you come to the imbarred or frozen sea, towards Iceland; in all which tract it hath no intermixture or interposition of any foreign land, but only of the sea, whereof you are also absolutely master.

Secondly, The quantity and content of these countries is far greater than have been the principal or fundamental regions of the greatest monarchies, greater than Persia proper, greater than Macedon, greater than Italy. So as here is potentially body and stem enough for Nabuchodonosor's tree, if God should have so ordained.

Thirdly, The prowess and valour of your subjects is able to master and wield far more territory than

falleth to their lot. But that followeth to be spoken of in the proper place.

And lastly, it must be confessed, that whatsoever part of your countries and regions shall be counted the meanest, yet is not inferior to those countries and regions, the people whereof some ages since over-ran the world. We see further by the uniting of the continent of this island, and the shutting up of the postern, as it was not unfitly termed, all entrance of foreigners is excluded: and we see again, that by the fit situation and configuration of the north of Scotland toward the north of Ireland, and the reputation, commodity, and terror thereof, what good effects have ensued for the better quieting of the troubles of Ireland. And so we conclude this first branch touching largeness of territory.

THE second article was,

That there is too much ascribed to treasure or riches in the balancing of greatness.

Wherein no man can be ignorant of the idolatry that is generally committed in these degenerate times to money, as if it could do all things public and private: but leaving popular errors, this is likewise to be examined by reason and examples, and such reason, as is no new conceit or invention, but hath formerly been discerned by the sounder sort of judgments. For we see that Solon, who was no contemplative wise man, but a statesman and a lawgiver, used a memorable censure to Crœsus, when he shewed him great treasures, and store of gold and silver that he had gathered, telling him, that when-

soever another should come that had better iron than he, he would be master of all his gold and silver. Neither is the authority of Machiavel to be despised, specially in a matter whereof he saw the evident experience before his eyes in his own times and country, who derideth the received and current opinion and principle of estate taken first from a speech of Mutianus the lieutenant of Vespasian, That money was the sinews of war; affirming, that it is a mockery, and that there are no other true sinews of war, but the sinews and muscles of men's arms: and that there was never any war, wherein the more valiant people had to deal with the more wealthy, but that the war, if it were well conducted, did nourish and pay itself. And had he not reason so to think, when he saw a needy and ill-provided army of the French, though needy rather by negligence, than want of means, as the French manner oftentimes is, make their passage only by the reputation of their swords by their sides undrawn, thorough the whole length of Italy, at that time abounding in wealth after a long peace, and that without resistance, and to seize and leave what countries and places it pleased them? But it was not the experience of that time alone, but the records of all times that do concur to falsify that conceit, that wars are decided not by the sharpest sword, but by the greatest purse. And that very text or saying of Mutianus which was the original of this opinion is misvouched, for his speech was, "Pecuniæ sunt "nervi belli civilis," which is true, for that civil war

cannot be between people of differing valour; and again because in them men are as oft bought as vanquished. But in case of foreign wars, you shall scarcely find any of the great monarchies of the world, but have had their foundations in poverty and contemptible beginnings, being in that point also conform to the heavenly kingdom, of which it is pronounced, "Regnum Dei non venit cum observatione." Persia, a mountainous country, and a poor people in comparison of the Medes and other provinces which they subdued. The state of Sparta, a state wherein poverty was enacted by law and ordinance; all use of gold and silver and rich furniture being interdicted. The state of Macedonia, a state mercenary and ignoble until the time of Philip. The state of Rome, a state that had poor and pastoral beginnings. The state of the Turks, which hath been since the terror of the world, founded upon a transmigration of some bands of Sarmatian Scythes, that descended in a vagabond manner upon the province that is now termed Turcomania; out of the remnants whereof, after great variety of fortune, sprang the Otoman family. But never was any position of estate so visibly and substantially confirmed as this, touching the pre-eminence, yea and predominancy of valour above treasure, as by the two descents and inundations of necessitous and indigent people, the one from the east, and the other from the west, that of the Arabians or Saracens, and that of the Goths, Vandals, and the rest: who, as if they had been the true inheritors of the

Roman empire, then dying, or at least grown impotent and aged, entered upon Egypt, Asia, Græcia, Afric, Spain, France, coming to these nations, not as to a prey, but as to a patrimony; not returning with spoil, but seating and planting themselves in a number of provinces, which continue their progeny, and bear their names till this day. And all these men had no other wealth but their adventures, nor no other title but their swords, nor no other press but their poverty. For it was not with most of these people as it is in countries reduced to a regular civility, that no man almost marrieth except he see he have means to live; but population went on, howsoever sustentation followed, and taught by necessity, as some writers report, when they found themselves surcharged with people, they divided their inhabitants into three parts, and one third, as the lot fell, was sent abroad and left to their adventures. Neither is the reason much unlike, though the effect hath not followed in regard of a special diversion, in the nation of the Swisses, inhabiting a country, which in regard of the mountainous situation, and the popular estate, doth generate faster than it can sustain. In which people, it well appeared what an authority iron hath over gold at the battle of Granson, at what time one of the principal jewels of Burgundy was sold for twelve pence, by a poor Swiss, that knew no more a precious stone than did Æsop's cock. And although this people have made no plantations with their arms, yet we see the reputation of them such, as not only their forces have

been employed and waged, but their alliance sought and purchased, by the greatest kings and states of Europe. So as though fortune, as it fares sometimes with princes to their servants, hath denied them a grant of lands, yet she hath granted them liberal pensions, which are made memorable and renowned to all posterity, by the event which ensued to Louis the twelfth; who, being pressed uncivilly by message from them for the inhauncing their pensions, entered into choler and broke out into these words, "What! will these villains of the mountains put a tax upon me? which words cost him his duchy of Milan, and utterly ruined his affairs in Italy. Neither were it indeed possible at this day, that that nation should subsist without descents and impressions upon their neighbours, were it not for the great utterance of people which they make into the services of foreign princes and estates, thereby discharging not only number, but in that number such spirits as are most stirring and turbulent.

And therefore we may conclude, that as largeness of territory, severed from military virtue, is but a burden; so, that treasure and riches severed from the same, is but a prey. It resteth therefore to make a reduction of this error also unto a truth by distinction and limitation, which will be in this manner:

Treasure and moneys do then add true greatness and strength to a state, when they are accompanied with these three conditions:

First, The same condition which hath been an-

nexed to largeness of territory, that is, that they be joined with martial prowess and valour.

Secondly, That treasure doth then advance greatness, when it is rather in mediocrity than in great abundance. And again better, when some part of the state is poor, than when all parts of it are rich.

And lastly, That treasure in a state is more or less serviceable, as the hands are in which the wealth chiefly resteth.

For the first of these, it is a thing that cannot be denied, that in equality of valour the better purse is an advantage. For like as in wrestling between man and man, if there be a great overmatch in strength, it is to little purpose though one have the better breath; but, if the strength be near equal, then he that is shorter winded will, if the wager consist of many falls, in the end have the worst: so it is in the wars, if it be a match between a valiant people and a cowardly, the advantage of treasure will not serve; but if they be near in valour, then the better monied state will be the better able to continue the war, and so in the end to prevail. But if any man think that money can make those provisions at the first encounters, that no difference of valour can countervail, let him look back but into those examples which have been brought, and he must confess, that all those furnitures whatsoever are but shews and mummeries, and cannot shrowd fear against resolution. For there shall he find

companies armed with armour of proof taken out of the stately armories of kings who spared no cost, overthrown by men armed by private bargain and chance as they could get it: there shall he find armies appointed with horses bred of purpose, and in choice races, chariots of war, elephants, and the like terrors, mastered by armies meanly appointed. So of towns strongly fortified, basely yielded, and the like; all being but sheep in a lion's skin, where valour faileth.

For the second point, that competency of treasure is better than surfeit, is a matter of common place or ordinary discourse; in regard that excess of riches, neither in public nor private, ever hath any good effects, but maketh men either slothful and effeminate, and so no enterprisers; or insolent and arrogant, and so overgreat embracers; but most generally cowardly and fearful to lose, according to the adage, "Timidus Plutus;" so as this needeth no further speech. But a part of that assertion requireth a more deep consideration, being a matter not so familiar, but yet most assuredly true. For it is necessary in a state that shall grow and inlarge, that there be that composition which the poet speaks of, "Multis utile bellum:" an ill condition of a state, no question, if it be meant of a civil war, as it was spoken; but a condition proper to a state that shall increase, if it be taken of a foreign war. For except there be a spur in the state, that shall excite and prick them on to the wars, they will but keep their own, and seek no further. And in all experience

and stories you shall find but three things that prepare and dispose an estate to war: the ambition of governors, a state of soldiers professed, and the hard means to live of many subjects. Whereof the last is the most forcible and the most constant. And this is the true reason of that event which we observed and rehearsed before, that most of the great kingdoms of the world have sprung out of hardness and scarceness of means, as the strongest herbs out of the barrenest soils.

For the third point, concerning the placing and distributing of treasure in a state, the position is simple; that then treasure is greatest strength to a state, when it is so disposed, as it is readiest and easiest to come by for public service and use: which one position doth infer three conclusions.

First, that there be quantity sufficient of treasure as well in the treasury of the crown or state, as in the purse of the private subject.

Secondly, that the wealth of the subject be rather in many hands than in few.

And thirdly, that it be in those hands, where there is likest to be the greatest sparing, and increase, and not in those hands, wherein there useth to be greatest expence and consumption.

For it is not the abundance of treasure in the subjects hands that can make sudden supply of the want of a state; because reason tells us, and experience both, that private persons have least will to contribute when they have most cause; for when there is noise or expectation of wars, then is always

the deadest times for monies, in regard every man restraineth and holdeth fast his means for his own comfort and succour, according as Solomon saith, The riches of a man are as a strong hold in his own imagination: and therefore we see by infinite examples, and none more memorable than that of Constantinus the last emperor of the Greeks, and the citizens of Constantinople, that subjects do often choose rather to be frugal dispensers for their enemies, than liberal lenders to their prince. Again, wheresoever the wealth of the subject is engrossed into few hands, it is not possible it should be so respondent and yielding to payments and contributions for the public, both because the true estimation or assessment of great wealth is more obscure and uncertain; and because the burden seemeth lighter when the charge lieth upon many hands; and further, because the same greatness of wealth is for the most part not collected and obtained without sucking it from many, according to the received similitude of the spleen, which never swelleth but when the rest of the body pineth and abateth. And lastly, it cannot be that any wealth should leave a second overplus for the public that doth not first leave an overplus to the private stock of him that gathers it; and therefore nothing is more certain, than that those states are least able to aid and defray great charge for wars, or other public disbursements, whose wealth resteth chiefly in the hands of the nobility and gentlemen. For what by reason of their magnificence and waste in expence, and what

by reason of their desire to advance and make great their own families, and again upon the coincidence of the former reason, because they are always the fewest; small is the help, as to payments or charge, that can be levied or expected from them towards the occasions of a state. Contrary it is of such states whose wealth resteth in the hands of merchants, burghers, tradesmen, freeholders, farmers in the country, and the like, whereof we have a most evident and present example before our eyes, in our neighbours of the Low-Countries, who could never have endured and continued so inestimable and insupportable charge, either by their natural frugality, or by their mechanical industry, were it not also that there was a concurrence in them of this last reason, which is, that their wealth was dispersed in many hands, and not ingrossed into few; and those hands were not much of the nobility, but most and generally of inferior conditions.

To make application of this part concerning treasure to your majesty's kingdoms:

First, I suppose I cannot err, that as to the endowment of your crown, there is not any crown of Europe, that hath so great a proportion of demesne and land revenue. Again, he that shall look into your prerogative shall find it to have as many streams to feed your treasury, as the prerogative of any of the said kings, and yet without oppression or taxing of your people. For they be things unknown in many other states, that all rich mines should be yours, though in the soil of your subjects; that all

wardships should be yours, where a tenure in chief is, of lands held of your subjects; that all confiscations and escheats of treason should be yours, though the tenure be of the subject; that all actions popular, and the fines and casualties thereupon may be informed in your name, and should be due unto you, and a moiety at the least where the subject himself informs. And further, he that shall look into your revenues at the ports of the sea, your revenues in courts of justice, and for the stirring of your seals, the revenues upon your clergy, and the rest, will conclude, that the law of England studied how to make a rich crown, and yet without levies upon your subject. For merchandizing, it is true, it was ever by the kings of this realm despised, as a thing ignoble and indign for a king, though it is manifest, the situation and commodities of this island considered, it is infinite, what your majesty might raise, if you would do as a king of Portugal doth, or a duke of Florence, in matter of merchandise. As for the wealth of the subject*:

To proceed to the articles affirmative, the first was,

That the true greatness of an estate consisteth in the natural and fit situation of the region or place.

Wherein I mean nothing superstitiously touching the fortunes or fatal destiny of any places, nor philosophically touching their configuration with the

* Memorandum, Here was a blank side left to continue the sense.

superior globe. But I understand proprieties and respects merely civil and according to the nature of human actions, and the true considerations of estate. Out of which duly weighed, there doth arise a triple distribution of the fitness of a region for a great monarchy. First, that it be of hard access. Secondly, that it be seated in no extreme angle, but commodiously in the midst of many regions. And thirdly, that it be maritime, or at the least upon great navigable rivers; and be not inland or mediterrane. And that these are not conceits, but notes of event, it appeareth manifestly, that all great monarchies and states have been seated in such manner, as, if you would place them again, observing these three points which I have mentioned, you cannot place them better; which shews the preeminence of nature, unto which human industry or accident cannot be equal, especially in any continuance of time. Nay, if a man look into these things, more attentively, he shall see divers of these seats of monarchies, how fortune hath hovered still about the places, coming and going only in regard of the fixed reason of the conveniency of the place, which is immutable. And therefore, first we see the excellent situation of Egypt; which seemeth to have been the most ancient monarchy, how conveniently it stands upon a neck of land commanding both seas on either side, and embracing, as it were with two arms, Asia and Afric, besides the benefit of the famous river of Nilus. And therefore we see what hath been the fortune of that country, there

having been two mighty returns of fortune, though at great distance of time; the one in the times of Sesostris, and the other in the empire of the Mamalukes, besides the middle greatness of the kingdom of the Ptolemys, and of the greatness of the caliphs and sultans in the latter times. And this region, we see likewise, is of strait and defensible access, being commonly called of the Romans, "Claustra Ægypti." Consider in like manner the situation of Babylon, being planted most strongly in regard of lakes and overflowing grounds between the two great navigable rivers of Euphrates and Tigris, and in the very heart of the world; having regard to the four "cardines" of east and west and northern and southern regions. And therefore we see, that although the sovereignty alter, yet the seat still of the monarchy remains in that place. For after the monarchies of the kings of Assyria, which were natural kings of that place, yet when the foreign kings of Persia came in, the seat remained. For although the mansion of the persons of the kings of Persia were sometimes at Susa, and sometimes at Ecbatana, which were termed their winter and their summer parlours, because of the mildness of the air in the one, and the freshness in the other; yet the city of estate continued to be Babylon. Therefore we see, that Alexander the Great, according to the advice of Calanus the Indian, that shewed him a bladder, which, if it were born down at one end, would rise at the other, and therefore wished him to keep himself in the middle

of his empire, chose accordingly Babylon for his seat, and died there. And afterwards likewise in the family of Seleucus and his descendents, kings of the east, although divers of them, for their own glory, were founders of cities of their own names, as Antiochia, Seleucia, and divers others, which they sought by all means to raise and adorn, yet the greatness still remained according unto nature with the ancient seat. Nay, further on, the same remained during the greatness of the kings of Parthia, as appeareth by the verse of Lucan, who wrote in Nero's time.

" Cumque superba staret Babylon spolianda trophaeis.

And after that, again it obtained the seat of the highest caliph or successors of Mahomet. And at this day, that which they call Bagdat, which joins to the ruin of the other, containeth one of the greatest satrapies of the Levant. So again Persia, being a country imbarred with mountains, open to the seas, and in the middle of the world, we see hath had three memorable revolutions of great monarchies. The first in the time of Cyrus; the second in the time of the new Artaxerxes, who raised himself in the reign of Alexander Severus, emperor of Rome; and now of late memory, in Ismael the sophy, whose descendents continue in empire and competition with the Turks to this day.

So again Constantinople, being one of the most excellentest seats of the world, in the confines of Europe and Asia.

A

PROPOSITION TO HIS MAJESTY

BY

SIR FRANCIS BACON, KNIGHT,

HIS MAJESTY'S ATTORNEY GENERAL, AND ONE OF HIS PRIVY COUNCIL;

TOUCHING THE

COMPILING AND AMENDMENT OF THE LAWS OF ENGLAND.

Your majesty, of your favour, having made me privy-counsellor, and continuing me in the place of your attorney-general, which is more than was these hundred years before, I do not understand it to be, that by putting off the dealing in causes between party and party, I should keep holy-day the more; but that I should dedicate my time to your service with less distraction. Wherefore in this plentiful accession of time, which I have now gained, I take it to be my duty, not only to speed your commandments and the business of my place, but to meditate and to excogitate of myself, wherein I may best, by my travels, derive your virtues to the good of your people, and return their thanks and increase of love to you again. And after I had thought of many things, I could find, in my judgment, none more proper for your majesty as a master, nor for me as a

workman, than the reducing and recompiling of the laws of England.

Your majesty is a king blessed with posterity; and these kings sort best with acts of perpetuity, when they do not leave them, instead of children; but transmit both line and merit to future generations. You are a great master in justice and judicature, and it were pity that the fruit of that virtue should die with you. Your majesty also reigneth in learned times; the more, in regard of your own perfections and patronage of learning; and it hath been the mishap of works of this nature, that the less learned time hath wrought upon the more learned, which now will not be so. As for myself, the law is my profession, to which I am a debtor. Some little helps I may have of other learning, which may give form to matter; and your majesty hath set me in an eminent place, whereby in a work, which must be the work of many, I may the better have coadjutors. Therefore, not to hold your majesty with any long preface, in that which I conceive to be nothing less than words, I will proceed to the matter: which matter itself nevertheless requireth somewhat briefly to be said, both of the dignity, and likewise of the safety, and convenience of this work: and then to go to the main: that is to say, to shew how the work is to be done: which incidently also will best demonstrate, that it is no vast nor speculative thing, but real and feasible. Callisthenes, that followed Alexander's court, and was grown in some displeasure with him, because

he could not well brook the Persian adoration; at a supper, which with the Grecians was ever a great part talk, was desired, because he was an eloquent man, to speak of some theme; which he did, and chose for his theme the praise of the Macedonian nation; which though it were but a filling thing to praise men to their faces, yet he did it with such advantage of truth, and avoidance of flattery, and with such life, as the hearers were so ravished with it that they plucked the roses off from their garlands, and threw them upon him; as the manner of applauses then was. Alexander was not pleased with it, and by way of discountenance said, It was easy to be a good orator in a pleasing theme: "But," saith he to Calisthenes, "turn your style, and tell us "now of our faults, that we may have the profit, "and not you only the praise;" which he presently did with such a force, and so piquantly, that Alexander said, The goodness of his theme had made him eloquent before; but now it was the malice of his heart, that had inspired him.

1. Sir, I shall not fall into either of those two extremes, concerning the laws of England; they commend themselves best to them that understand them; and your majesty's chief justice of your bench hath in his writings magnified them not without cause: certainly they are wise, they are just and moderate laws; they give to God, they give to Cæsar, they give to the subjects, that which appertaineth. It is true, they are as mixt as our language, compounded of British, Roman, Saxon, Danish, Norman customs.

And as our language is so much the richer, so the laws are the more complete: neither doth this attribute less to them, than those that would have them to have stood out the same in all mutations; for no tree is so good first set, as by transplanting.

2. As for the second extreme, I have nothing to do with it by way of taxing the laws. I speak only by way of perfecting them, which is easiest in the best things: for that which is far amiss hardly receiveth amendment; but that which hath already, to that more may be given. Besides, what I shall propound is not to the matter of the laws, but to the manner of their registry, expression, and tradition: so that it giveth them rather light than any new nature. This being so, for the dignity of the work I know scarcely where to find the like: for surely that scale, and those degrees of sovereign honour, are true and rightly marshalled; first the founders of states; then the lawgivers; then the deliverers and saviours after long calamities; then the fathers of their countries, which are just and prudent princes; and lastly, conquerors, which honour is not to be received amongst the rest, except it be where there is an addition of more country and territory to a better government than that was of the conquered. Of these, in my judgment, your majesty may with more truth and flattery be intitled to the first, because of your uniting of Britain and planting Ireland; both which savour of the founder. That which I now propound to you, may adopt you also into the second: lawgivers have been called

"principes perpetui;" because as bishop Gardiner said in a bad sense, that he would be bishop an hundred years after his death, in respect of the long leases he made: so lawgivers are still kings and rulers after their decease, in their laws. But this work, shining so in itself, needs no taper. For the safety and convenience thereof, it is good to consider, and to answer those objections or scruples which may arise or be made against this work.

Obj. I. That it is a thing needless; and that the law, as it now is, is in good estate comparable to any foreign law; and that it is not possible for the wit of man, in respect of the frailty thereof, to provide against the incertainties and evasions, or omissions of law.

Resp. For the comparison with foreign laws, it is in vain to speak of it; for men will never agree about it. Our lawyers will maintain for our municipal laws; civilians, scholars, travellers, will be of the other opinion.

But certain it is, that our laws, as they now stand, are subject to great uncertainties, and variety of opinion, delays, and evasions: whereof ensueth,

1. That the multiplicity and length of suits is great.

2. That the contentious person is armed, and the honest subject wearied and oppressed.

3. That the judge is more absolute; who, in doubtful cases, hath a greater stroke and liberty.

4. That the chancery courts are more filled, the remedy of law being often obscure and doubtful.

5. That the ignorant lawyer shroudeth his ignorance of law, in that doubts are so frequent and many.

6. That men's assurances of their lands and estates by patents, deeds, wills, are often subject to question, and hollow; and many the like inconveniencies.

It is a good rule and direction, for that all laws, "secundum majus et minus," do participate of uncertainties, that followeth: Mark, whether the doubts that arise, are only in cases not of ordinary experience; or which happen every day. If in the first only, impute it to the frailty of man's foresight, that cannot reach by law to all cases; but, if in the latter, be assured there is a fault in the law. Of this I say no more, but that, to give every man his due, had it not been for Sir Edward Coke's Reports, (which though they may have errors, and some peremptory and extrajudicial resolutions more than are warranted; yet they contain infinite good decisions, and rulings over of cases,) the law, by this time, had been almost like a ship without ballast; for that the cases of modern experience are fled from those that are adjudged and ruled in former time.

But the necessity of this work is yet greater in the statute law. For first, there are a number of ensnaring penal laws, which lie upon the subject; and if in bad times they should be awaked and put in execution, would grind them to powder.

There is a learned civilian that expoundeth the

curse of the prophet, " Pluet super eos laqueos," of a multitude of penal laws, which are worse than showers of hail or tempest upon cattle, for they fall upon men.

There are some penal laws fit to be retained, but their penalty too great; and it is ever a rule, That any over-great penalty, besides the acerbity of it, deadens the execution of the law.

There is a further inconvenience of penal laws, obsolete, and out of use; for that it brings a gangrene, neglect, and habit of disobedience upon other wholesome laws, that are fit to be continued in practice and execution; so that our laws endure the torment of Mezentius:

" The living die in the arms of the dead."

Lastly, There is such an accumulation of statutes concerning one matter, and they so cross and intricate, as the certainty of law is lost in the heap; as your majesty had experience last day upon the point, Whether the incendiary of Newmarket should have the benefit of his clergy.

Obj. II. That it is a great innovation; and innovations are dangerous beyond foresight.

Resp. All purgings and medicines, either in the civil or natural body, are innovations: so as that argument is a common place against all noble reformations. But the truth is, that this work ought not to be termed or held for any innovation in the suspected sense. For those are the innovations which are quarreled and spoken against, that concern

the consciences, estates, and fortunes of particular persons: but this of general ordinance pricketh not particulars, but passeth "sine strepitu." Besides, it is on the favourable part; for it easeth, it presseth not: and lastly, it is rather matter of order and explanation than of alteration. Neither is this without precedent in former governments.

The Romans, by their Decemvirs, did make their twelve tables; but that was indeed a new enacting or constituting of laws, not a registering or recompiling; and they were made out of the laws of the Grecians, not out of their own customs.

In Athens they had Sexviri, which were standing commissioners to watch and to discern what laws waxed improper for the time; and what new law did, in any branch, cross a former law, and so "ex officio," propounded their repeals.

King Lewis XI. of France, had it in his intention to have made one perfect and uniform law, out of the civil law Roman, and the provisional customs of France.

Justinian the Emperor, by commission directed to divers persons learned in the laws, reduced the Roman laws from vastness of volume, and a labyrinth of uncertainties, unto that course of the civil law which is now in use. I find here at home of late years, that King Henry VIII. in the twenty-seventh of his reign was authorised by parliament to nominate thirty-two commissioners, part ecclesiastical, part temporal, to purge the canon law, and to make it agreeable to the law of God, and the law of

the realm; and the same was revived in the fourth year of Edward VI. though neither took effect.

For the laws of Lycurgus, Solon, Minos, and others of ancient time, they are not the worse, because grammar scholars speak of them: but things too ancient wax children with us again.

Edgar, the Saxon king, collected the laws of this kingdom, and gave them the strength of a faggot bound, which formerly were dispersed.

The statutes of king Edward the first were fundamental. But, I doubt, I err in producing so many examples: for, as Cicero saith to Cæsar, so may I say to your majesty; "Nil vulgare te dignum "videri possit."

Obj. III. In this purging of the course of the common laws and statutes, much good may be taken away.

Resp. In all purging, some good humours may pass away; but that is largely recompensed by lightening the body of much bad.

Obj. IV. Labour were better bestowed, in bringing the common laws of England to a text law, as the statutes are, and setting both of them down in method and by titles.

Resp. It is too long a business to debate, whether "lex scripta, aut non scripta," a text law, or customs well registered, with received and approved grounds and maxims, and acts and resolutions judicial, from time to time duly entered and reported, be the better form of declaring and authorising laws. It was the principal reason or oracle of Lycurgus, that none of

his laws should be written. Customs are laws written in living tables, and some traditions the Church doth not disauthorise. In all sciences they are the soundest, that keep close to particulars; and, sure I am, there are more doubts that rise upon our statutes, which are a text law, than upon the common law, which is no text law. But, howsoever that question be determined, I dare not advise to cast the law into a new mold. The work, which I propound, tendeth to pruning and grafting the law, and not to plowing up and planting it again; for such a remove I should hold indeed for a perilous innovation.

Obj. V. It will turn the judges, counsellors of law, and students of law to school again, and make them to seek what they shall hold and advise for law; and it will impose a new charge upon all lawyers to furnish themselves with new books of law.

Resp. For the former of these, touching the new labour, it is true it would follow, if the law were new molded into a text law; for then men must be new to begin, and that is one of the reasons for which I disallow that course.

But in the way that I shall now propound, the entire body and substance of law shall remain, only discharged of idle and unprofitable or hurtful matter; and illustrated by order and other helps, towards the better understanding of it and judgment thereupon.

For the latter, touching the new charge, it is not worthy the speaking of in a matter of so high importance; it might have been used of the new

translation of the Bible, and such like works. Books must follow sciences, and not sciences books.

This work is to be done, to use some few words, which is the language of action and effect, in this manner.

It consisteth of two parts; the digest or recompiling of the common laws, and that of the statutes.

In the first of these, three things are to be done:

1. The compiling of a book "De antiquitatibus juris."

2. The reducing or perfecting of the course or corps of the common laws.

3. The composing of certain introductive and auxiliary books touching the study of the laws.

For the first of these, all ancient records in your Tower, or elsewhere, containing acts of parliament, letters patents, commissions, and judgments, and the like, are to be searched, perused, and weighed: and out of these are to be selected those that are of most worth and weight, and in order of time, not of titles, for the more conformity with the year-books, to be set down and registred, rarely in "hæc verba;" but summed with judgment, not omitting any material part; these are to be used for reverend precedents, but not for binding authorities.

For the second, which is the main, there is to be made a perfect course of the law "in serie temporis," or year-books, as we call them, from Edward the first to this day: in the compiling of this course of law, or year-books, the points following are to be observed.

First, All cases which are at this day clearly no law, but constantly ruled to the contrary, are to be left out; they do but fill the volumes, and season the wits of students in a contrary sense of law. And so likewise all cases, wherein that is solemnly and long debated, whereof there is now no question at all, are to be entered as judgments only, and resolutions, but without the arguments, which are now become but frivolous: yet for the observation of the deeper sort of lawyers, that they may see how the law hath altered, out of which they may pick sometimes good use, I do advise, that upon the first in time of those obsolete cases there was a memorandum set, that at that time the law was thus taken, until such a time, &c.

Secondly, Homonymiæ, as Justinian calleth them, that is, cases merely of iteration and repetition, are to be purged away: and the cases of identity, which are best reported and argued, to be retained instead of the rest; the judgements nevertheless to be set down, every one in time as they are, but with a quotation or reference to the case where the point is argued at large: but if the case consist part of repetition, part of new matter, the repetition is only to be omitted.

Thirdly, As to the Antinomiæ, cases judged to the contrary, it were too great a trust to refer to the judgment of the composers of this work, to decide the law either way, except there be a current stream of judgments of later times; and then I reckon the contrary cases amongst cases obsolete, of which I

have spoken before: nevertheless this diligence would be used, that such cases of contradiction be specially noted and collected, to the end those doubts, that have been so long militant, may either, by assembling all the judges in the exchequer chamber, or by parliament, be put into certainty. For to do it, by bringing them in question under feigned parties, is to be disliked. "Nihil habeat forum ex scena."

Fourthly, All idle queries, which are but seminaries of doubts, and uncertainties, are to be left out and omitted, and no queries set down, but of great doubts well debated, and left undecided for difficulty; but no doubting or upstarting queries, which though they be touched in argument for explanation, yet were better to die than to be put into the books.

Lastly, Cases reported with too great prolixity would be drawn into a more compendious report; not in the nature of an abridgment, but tautologies and impertinences to be cut off: as for misprinting, and insensible reporting, which many times confound the students, that will be "obiter" amended; but more principally, if there be any thing in the report which is not well warranted by the record, that is also to be rectified: the course being thus compiled, then it resteth but for your majesty to appoint some grave and sound lawyers, with some honourable stipend, to be * reporters for the time to come, and then this is settled for all times.

* This constitution of Reporters I obtained of the King, after I was Chancellor; and there are two appointed with 100*l.* a year a-piece stipend.

For the auxiliary books that conduce to the study and science of the law, they are three: Institutions; a treatise "De regulis juris;" and a better book "De verborum significationibus," or terms of the law. For the Institutions, I know well there be books of introductions, wherewith students begin, of good worth, especially Littleton and Fitzherbert's "Natura brevium;" but they are no ways of the nature of an institution; the office whereof is to be a key and general preparation to the reading of the course. And principally it ought to have two properties; the one a perspicuous and clear order or method; and the other, an universal latitude or comprehension, that the students may have a little prenotion of every thing, like a model towards a great building. For the treatise "De regulis juris," I hold it, of all other things, the most important to the health, as I may term it, and good institutions of any laws: it is indeed like the ballast of a ship, to keep all upright and stable; but I have seen little in this kind, either in our law or other laws, that satisfieth me. The naked rule or maxim doth not the effect: It must be made useful by good differences, ampliations, and limitations, warranted by good authorities; and this not by raising up of quotations and references, but by discourse and deducement in a just tractate. In this I have travelled myself, at the first more cursorily, since with more diligence, and will go on with it, if God and your majesty will give me leave. And I do assure your majesty, I am in good hope, that when Sir Edward Coke's Reports, and my rules and decisions shall come to posterity,

there will be, whatsoever is now thought, question, who was the greater lawyer? For the books Of the terms of the law, there is a poor one, but I wish a diligent one, wherein should be comprised not only the exposition of the terms of law, but of the words of all ancient records and precedents.

For the Abridgments, I could wish, if it were possible, that none might use them, but such as had read the course first, that they might serve for repertories to learned lawyers, and not to make a lawyer in haste: but since that cannot be, I wish there were a good abridgment composed of the two that are extant, and in better order. So much for the common law.

For the reforming and recompiling of the statute law, it consisteth of four parts.

1. The first, to discharge the books of those statutes, where the case, by alteration of time, is vanished; as Lombards Jews, Gauls half-pence, &c. Those may nevertheless remain in the libraries for antiquities, but no reprinting of them. The like of statutes long since expired and clearly repealed; for if the repeal be doubtful, it must be so propounded to the parliament.

2. The next is, to repeal all statutes which are sleeping and not of use, but yet snaring and in force: in some of those it will perhaps be requisite to substitute some more reasonable law, instead of them, agreeable to the time; in others a simple repeal may suffice.

3. The third, that the grievousness of the penalty in many statutes be mitigated, though the ordinance stand.

4. The last is, the reducing of concurrent statutes, heaped one upon another, to one clear and uniform law. Towards this there hath been already, upon my motion, and your majesty's direction, a great deal of good pains taken; my Lord Hobart, myself, Serjeant Finch, Mr. Heneage Finch, Mr. Noye, Mr. Hackwell, and others, whose labours being of a great bulk, it is not fit now to trouble your majesty with any further particularity therein; only by this you may perceive the work is already advanced: but because this part of the work, which concerneth the statute laws, must of necessity come to parliament, and the houses will best like that which themselves guide, and the persons that themselves employ, the way were to imitate the precedent of the commissioners for the canon laws in 27 Hen. VIII. and 4 Edw. VI. and the commissioners for the union of the two realms, "primo" of your majesty, and so to have the commissioners named by both houses; but not with a precedent power to conclude, but only to prepare and propound to parliament.

This is the best way, I conceive, to accomplish this excellent work, of honour to your majesty's times, and of good to all times; which I submit to your majesty's better judgment.

AN OFFER TO KING JAMES

OF

A DIGEST

TO BE MADE OF

THE LAWS OF ENGLAND.

MOST EXCELLENT SOVEREIGN,

AMONGST the degrees and acts of sovereign, or rather heroical honour, the first or second is the person and merit of a lawgiver. Princes that govern well are fathers of the people: but if a father breed his son well, or allow him well while he liveth, but leave him nothing at his death, whereby both he and his children, and his childrens children, may be the better, surely the care and piety of a father is not in him complete. So kings, if they make a portion of an age happy by their good government, yet if they do not make testaments, as God Almighty doth, whereby a perpetuity of good may descend to their country, they are but mortal and transitory benefactors. Domitian, a few days before he died, dreamed that a golden head did rise upon the nape of his neck: which was truly performed in the golden age that followed his times for five successions. But kings, by giving their subjects good laws, may, if they will, in their own time, join and graft this golden head

upon their own necks after their death. Nay, they may make Nabuchodonozor's image of monarchy golden from head to foot. And if any of the meaner sort of polities, that are sighted only to see the worst of things, think, that laws are but cobwebs, and that good princes will do well without them, and bad will not stand much upon them; the discourse is neither good nor wise. For certain it is, that good laws are some bridle to bad princes, and as a very wall about government. And if tyrants sometimes make a breach into them, yet they mollify even tyranny itself, as Solon's laws did the tyranny of Pisistratus: and then commonly they get up again, upon the first advantage of better times. Other means to perpetuate the memory and merits of sovereign princes are inferior to this. Buildings of temples, tombs, palaces, theatres, and the like, are honourable things, and look big upon posterity: but Constantine the Great gave the name well to those works, when he used to call Trajan, that was a great builder, Parietaria, wall-flower, because his name was upon so many walls: so if that be the matter, that a king would turn wall-flower, or pellitory of the wall, with cost he may. Adrian's vein was better, for his mind was to wrestle a fall with time; and being a great progressor through all the Roman empire, whenever he found any decays of bridges, or highways, or cuts of rivers and sewers, or walls, or banks, or the like, he gave substantial order for their repair with the better. He gave also multitudes of charters and liberties for the comfort of corporations

and companies in decay: so that his bounty did strive with the ruins of time. But yet this, though it were an excellent disposition, went but in effect to the cases and shells of a commonwealth. It was nothing to virtue or vice. A bad man might indifferently take the benefit and ease of his ways and bridges, as well as a good; and bad people might purchase good charters. Surely the better works of perpetuity in princes are those, that wash the inside of the cup; such as are foundations of colleges and lectures for learning and education of youth; likewise foundations and institutions of orders and fraternities, for nobleness, enterprise, and obedience, and the like. But yet these also are but like plantations of orchards and gardens, in plots and spots of ground here and there; they do not till over the whole kingdom, and make it fruitful, as doth the establishing of good laws and ordinances; which makes a whole nation to be as a well-ordered college or foundation.

This kind of work, in the memory of times, is rare enough to shew it excellent: and yet not so rare, as to make it suspected for impossible, inconvenient, or unsafe. Moses, that gave laws to the Hebrews, because he was the scribe of God himself, is fitter to be named for honour's sake to other lawgivers, than to be numbered or ranked amongst them. Minos, Lycurgus, and Solon, are examples for themes of grammar scholars. For ancient personages and characters now-a-days use to wax children again; though that parable of Pindarus be

true, the best thing is water: for common and trivial things are many times the best, and rather despised upon pride, because they are vulgar, than upon cause or use. Certain it is, that the laws of those three lawgivers had great prerogatives. The first of fame, because they were the pattern amongst the Grecians: the second of lasting, for they continued longest without alteration: the third, of a spirit of reviver, to be often oppressed, and often restored.

Amongst the seven kings of Rome four were law-givers: for it is most true, that a discourser of Italy saith; "there was never state so well swaddled "in the infancy, as the Roman was by the virtue of "their first kings; which was a principal cause of "the wonderful growth of that state in after-times."

The Decemvirs' laws were laws upon laws, not the original; for they grafted laws of Græcia upon the Roman stock of laws and customs: but such was their success, as the twelve tables which they compiled were the main body of the laws which framed and wielded the great body of that estate. These lasted a long time, with some supplementals and the Prætorian edicts "in albo;" which were, in respect of laws, as writing tables in respect of brass; the one to be put in and out, as the other is permanent. Lucius Cornelius Sylla reformed the laws of Rome: for that man had three singularities, which never tyrant had but he; that he was a lawgiver, that he took part with the nobility, and that he turned private man, not upon fear, but upon confidence.

Cæsar long after desired to imitate him only in

the first, for otherwise he relied upon new men; and for resigning his power Seneca describeth him right; "Cæsar gladium cito condidit, nunquam "posuit," Cæsar soon sheathed his sword, but never put it off. And himself took it upon him, saying in scorn of Sylla's resignation; "Sylla nescivit literas, "dictare non potuit," "Sylla knew no letters, he "could not dictate." But for the part of a lawgiver, Cicero giveth him the attribute; "Cæsar, si ab eo "quæreretur, quid egisset in toga; leges se res- "pondisset multas et præclaras tulisse;" "If you "had asked Cæsar what he did in the gown, he "would have answered, that he made many ex- "cellent laws." His nephew Augustus did tread the same steps, but with deeper print, because of his long reign in peace; whereof one of the poets of his time saith,

"Pace data terris, animum ad civilia vertit
"Jura suum; legesque tulit justissimus auctor."

From that time there was such a race of wit and authority, between the commentaries and decisions of the lawyers, and the edicts of the emperors, as both law and lawyers were out of breath. Whereupon Justinian in the end recompiled both, and made a body of laws such as might be wielded, which himself calleth gloriously, and yet not above truth, the edifice or structure of a sacred temple of justice, built indeed out of the former ruins of books, as materials, and some novel constitutions of his own.

In Athens they had Sexviri, as Æschines observeth, which were standing commissioners, who

did watch to discern what laws waxed improper for the times, and what new law did in any branch cross a former law, and so "ex officio" propounded their repeal.

King Edgar collected the laws of this kingdom, and gave them the strength of a faggot bound, which formerly were dispersed; which was more glory to him, than his sailing about this island with a potent fleet: for that was, as the Scripture saith, "via navis "in mari," "the way of a ship in the sea;" it vanished, but this lasteth. Alphonso the wise, the ninth of that name, king of Castile, compiled the digest of the laws of Spain, intitled the "Siete Partidas;" an excellent work, which he finished in seven years. And as Tacitus noteth well, that the Capitol, though built in the beginnings of Rome, yet was fit for the great monarchy that came after; so that building of laws sufficeth the greatness of the empire of Spain, which since hath ensued.

Lewis XI. had it in his mind, though he performed it not, to have made one constant law of France, extracted out of the civil Roman law, and the customs of provinces which are various, and the king's edicts, which with the French are statutes. Surely he might have done well, if, like as he brought the crown, as he said himself, from Page, so he had brought his people from Lackey; not to run up and down for their laws to the civil law, and the ordinances and the customs and the discretions of courts, and discourses of philosophers, as they use to do.

King Henry VIII. in the twenty-seventh year of his reign, was authorized by parliament to nominate thirty-two commissioners, part ecclesiastical, and part temporal, to purge the canon law, and to make it agreeable to the law of God, and the law of the land; but it took not effect: for the acts of that king were commonly rather proffers and fames, than either well-grounded, or well pursued: but, I doubt, I err in producing so many examples. For as Cicero said to Cæsar, so I may say to your majesty, "Nil vulgare te dignum videri possit." Though indeed this well understood is far from vulgar: for that the laws of the most kingdoms and states have been like buildings of many pieces, and patched up from time to time according to occasions, without frame or model.

Now for the laws of England, if I shall speak my opinion of them without partiality either to my profession or country, for the matter and nature of them, I hold them wise, just, and moderate laws: they give to God, they give to Cæsar, they give to the subject, what appertaineth. It is true they are as mixt as our language, compounded of British, Roman, Saxon, Danish, Norman customs: and surely as our language is thereby so much the richer, so our laws are likewise by that mixture the more complete.

Neither doth this attribute less to them, than those that would have them to have stood out the same in all mutations. For no tree is so good first set, as by transplanting and grafting. I remember

what happened to Callisthenes, that followed Alexander's court, and was grown into some displeasure with him, because he could not well brook the Persian adoration. At a supper, which with the Grecians was a great part talk, he was desired, the king being present, because he was an eloquent man, to speak of some theme, which he did; and chose for his theme, the praise of the Macedonian nation, which though it were but a filling thing to praise men to their faces, yet he performed it with such advantage of truth, and avoidance of flattery, and with such life, as was much applauded by the hearers. The king was the less pleased with it, not loving the man, and by way of discountenance said: It was easy to be a good orator in a pleasing theme. "But," saith he to him, "turn your style, and tell "us now of our faults, that we may have the profit, "and not you the praise only;" which he presently did with such quickness, that Alexander said, That malice made him eloquent then, as the theme had done before. I shall not fall into either of these extremes, in this subject of the laws of England; I have commended them before for the matter, but surely they ask much amendment for the form; which to reduce and perfect, I hold to be one of the greatest dowries that can be conferred upon this kingdom: which work, for the excellency, as it is worthy your majesty's act and times, so it hath some circumstance of propriety agreeable to your person. God hath blessed your majesty with posterity, and I am not of opinion that kings that are barren are

fittest to supply perpetuity of generations by perpetuity of noble acts; but contrariwise, that they that leave posterity are the more interested in the care of future times; that as well their progeny, as their people, may participate of their merit.

Your majesty is a great master in justice and judicature, and it were pity the fruit of that your virtue should not be transmitted to the ages to come. Your majesty also reigneth in learned times, the more, no doubt, in regard of your own perfection in learning, and your patronage thereof. And it hath been the mishap of works of this nature, that the less learned time hath, sometimes, wrought upon the more learned, which now will not be so. As for myself, the law was my profession, to which I am a debtor: some little helps I have of other arts, which may give form to matter: and I have now, by God's merciful chastisement, and by his special providence, time and leisure to put my talent, or half talent, or what it is, to such exchanges as may perhaps exceed the interest of an active life. Therefore, as in the beginning of my troubles I made offer to your majesty to take pains in the story of England, and in compiling a method and digest of your laws, so have I performed the first, which rested but upon myself, in some part: and I do in all humbleness renew the offer of this latter, which will require help and assistance, to your majesty, if it shall stand with your good pleasure to employ my service therein.

A

CERTIFICATE TO HIS MAJESTY,

TOUCHING THE PROJECTS OF

SIR STEPHEN PROCTOR,

RELATING TO

THE PENAL LAWS.

IT MAY PLEASE YOUR SACRED MAJESTY,

With the first free time from your majesty's service of more present dispatch, I have perused the projects of Sir Stephen Proctor, and do find it a collection of extreme diligence and inquisition, and more than I thought could have met in one man's knowledge. For though it be an easy matter to run over many offices and professions, and to note in them general abuses or deceits; yet, nevertheless, to point at and trace out the particular and covert practices, shifts, devices, tricks, and, as it were, stratagems in the meaner sort of the ministers of justice or public service, and to do it truly and understandingly, is a discovery whereof great good use may be made for your majesty's service and good of your people. But because this work, I doubt not, hath been to the gentleman the work of years, whereas my certificate must be the work but of hours or days, and that it is commonly and truly said,

that he that embraceth much, straineth and holdeth the less, and that propositions have wings, but operation and execution have leaden feet; I most humbly desire pardon of your majesty, if I do for the present only select some one or two principal points, and certify my opinion thereof; reserving the rest as a sheaf by me to draw out, at further time, further matter for your majesty's information for so much as I shall conceive to be fit or worthy the consideration.

For that part, therefore, of these projects which concerneth penal laws, I do find the purpose and scope to be, not to press a greater rigour or severity in the execution of penal laws; but to repress the abuses in common informers, and some clerks and under-ministers, that for common gain partake with them: for if it had tended to the other point, I for my part should be very far from advising your majesty to give ear unto it. For as it is said in the psalm, "If thou, Lord, should be extreme to mark "what is done amiss, who may abide it?" So it is most certain, that your people is so ensnared in a multitude of penal laws, that the execution of them cannot be borne. And as it followeth; "But with "thee is mercy, that thou mayest be feared:" so it is an intermixture of mercy and justice that will bring you fear and obedience: for too much rigour makes people desperate. And therefore to leave this, which was the only blemish of king Henry VII.'s reign, and the unfortunate service of Empson and Dudley, whom the people's curses, rather than any law, brought to overthrow; the other work is a work

not only of profit to your majesty, but of piety towards your people. For if it be true in any proportion, that within these five years of your majesty's happy reign, there hath not five hundred pounds benefit come to your majesty by penal laws, the fines of the Star-chamber, which are of a higher kind, only excepted, and yet, nevertheless, there hath been a charge of at least fifty thousand pounds, which hath been laid upon your people, it were more than time it received a remedy.

This remedy hath been sought by divers statutes, as principally by a statute in 18, and another of 31, of the late queen of happy memory. But I am of opinion, that the appointing of an officer proper for that purpose, will do more good than twenty statutes, and will do that good effectually, which these statutes aim at intentionally.

And this I do allow of the better, because it is none of those new superintendencies, which I see many times offered upon pretence of reformation, as if judges did not their duty, or ancient and sworn officers did not their duty and the like: but it is only to set a custos or watchman, neither over judges nor clerks, but only over a kind of people that cannot be sufficiently watched or overlooked, and that is, the common promoters or informers: the very awe and noise whereof will do much good, and the practice much more.

I will therefore set down first, what is the abuse or inconvenience, and then what is the remedy which may be expected from the industry of this officer.

And I will divide it into two parts, the one, for that that may concern the ease of your people, for with that will I crave leave to begin, as knowing it to be principal in your majesty's intention, and the other for that, that may concern your majesty's benefit.

Concerning the ease of his majesty's subjects, polled and vexed by common informers.

THE ABUSES OR INCONVENIENCIES.	THE REMEDIES BY THE INDUSTRY OF THE OFFICER.
1. An informer exhibits an information, and in that one information he will put an hundred several subjects of this information. Every one shall take out copies, and every one shall put in his several answer. This will cost perhaps an hundred marks: that done, no further proceeding. But the clerks have their fees, and the informer hath his dividend for bringing the water to the mill.	1. The officer by his diligence finding this case, is to inform the court thereof, who thereupon may grant good costs against the informer, to every of the subjects vexed: and withal not suffer the same informer to revive his information against any of them; and lastly, fine him, as for a misdemeanor and abuse of justice: and by that time a few of such examples be made, they, will be soon weary of that practice.
It is to be noted, that this vexation is not met with by any statute. For it is no composition, but	

a discontinuance; and in that case there is no penalty, but costs: and the poor subject will never sue for his costs, lest it awake the informer to revive his information, and so it escapeth clearly.

2. Informers receive pensions of divers persons to forbear them. And this is commonly of principal offenders, and of the wealthiest sort of tradesmen. For if one tradesman may presume to break the law, and another not, he will be soon richer than his fellows. As for example, if one draper may use tenters, because he is in fee with an informer, and others not, he will soon outstrip the good tradesman that keeps the law.

And if it be thought strange that any man should seek his peace by one informer, when he lieth open to all, the ex-

2. This is an abuse that appeareth not by any proceeding in court, because it is before suit commenced, and therefore requireth a particular enquiry.

But when it shall be the care and cogitation of one man to overlook informers, these things are easily discovered: for let him but look who they be that the informer calls in question, and hearken who are of the same trade in the same place and are spared, and it will be easy to trace a bargain.

In this case, having discovered the abuse, he ought to inform the barons of the exchequer,

perience is otherwise: for one informer will bear with the friend of another, looking for the like measure.

And besides, they have devices to get priority of information, and to put in an information "de bene esse," to prevent others, and to protect their pensioners.

And if it be said this is a pillory matter to the informer, and therefore he will not attempt it; although therein the statute is a little doubtful: yet if hanging will not keep thieves from stealing, it is not pillory will keep informers from polling.

And herein Sir Stephen addeth a notable circumstance: that they will peruse a trade, as of brewers or victuallers, and if any stand out, and will not be in fee, they will find means to have a dozen and the king's learned counsel, that by the Star-chamber, or otherwise, such taxers of the king's subjects may be punished.

informations come upon him at once.

3. The subject is often for the same offence vexed by several informations: sometimes the one informer not knowing of the other; and often by confederacy, to weary the party with charge: upon every of which goeth process, and of every of them he must take copies, and make answers, and so relieve himself by motion of the court if he can; all which multiplieth charge and trouble.

3. The officer keeping a book of all the informations put in, with a brief note of the matter, may be made acquainted with all informations to come in: and if he find a precedent for the same cause, he may inform some of the barons, that by their order the receiving of the latter may be stayed without any charge to the party at all; so as it appear by the due prosecution of the former, that it is not a suit by collusion to protect the party.

Concerning the King's benefit, which may grow by a moderate prosecution of some penal laws.

THE ABUSES OR INCONVENIENCES.

1. After an information is exhibited and answered, for so the statute requires, the informer for

THE REMEDIES.

1. The officer in this point is to perform his greatest service to the king, in soliciting for the

the most part groweth to composition with the defendant; which he cannot do without peril of the statute, except he have licence from the court, which licence he ought to return by order and course of the court, together with a declaration upon his oath of the true sum that he takes for the composition. Upon which licence so returned, the court is to tax a fine for the king.

This ought to be, but as it is now used, the licence is seldom returned. And although it contain a clause that the licence shall be void, if it be not duly returned; yet the manner is to suggest that they are still in terms of composition, and so to obtain new days, and to linger it on till a parliament and a pardon come.

Also, when the licence is returned, and thereking in such sort as licences be duly returned, the deceits of these fraudulent compositions discovered, and fines may be set for the king in some good proportion, having respect to the values both of the matter and the person: for the king's fines are not to be delivered, as moneys given by the party, "ad redimendam vexationem," but as moneys given "ad redimendam culpam et pœnam legis;" and ought to be in such quantity, as may not make the laws altogether trampled down and contemned. Therefore the officer ought first to be made acquainted with every licence, that he may have an eye to the sequel of it: then ought he to be the person that ought to prefer unto the judges or barons, as well the bills for the taxations of the fines, as the orders for

upon the judge or baron to sesse a fine; there is none for the king to inform them of the nature of the offence; of the value to grow to the king if the suit prevail; of the ability of the person, and the like. By reason whereof, the fine that is set is but a trifle, as 20, 30, or 40s. and it runs in a form likewise which I do not well like: for it is "ut parcatur misis," which purporteth, as if the party did not any way submit himself, and take the composition as of grace of the court, but as if he did justify himself, and were content to give a trifle to avoid charge.

Which point of form hath a shrewd consequence: for it is some ground that the fine is set too weak.

And as for the informer's oath touching his giving further days, to the end that the court may be duly informed both of the weight of causes, and the delays therein used; and lastly, he is to see that the fines sessed be duly put in process, and answered.

composition, which is commonly a trifle, and is the other ground of the smallness of the fine, it is no doubt taken with an equivocation: as taking such a sum in name of a composition, and some greater matter by some indirect or collateral mean.

Also, these fines, light as they be, are seldom answered and put in process.

2. An information goeth on to trial, and passeth for the king. In this case of recovery, the informer will be satisfied, and will take his whole moiety, for that he accounts to be no composition: that done, none will be at charge to return the "postea," and to procure judgment and execution for the king. For the informer hath that he sought for, the clerks will do nothing without fees paid, which there being no man to prosecute, there can be no man likewise

2. The officer is to follow for the king, that the "posteas" be returned.

to pay; and so the king loseth his moiety, when his title appears by verdict.

3. It falleth out sometimes in informations of weight, and worthy to be prosecuted, the informer dieth, or falls to poverty, or his mouth is stopped, and yet so as no man can charge him with composition, and so the matter dieth.

3. The officer in such case is to inform the king's learned counsel, that they may prosecute if they think fit.

4. There be sundry seizures made, in case where the laws give seizures, which are released by agreements underhand, and so money wrested from the subject, and no benefit to the king.

All seizures once made ought not to be discharged, but by order of the court, and therefore some entry ought to be made of them.

4. The officer is to take knowledge of such seizures, and to give information to the court concerning them.

This is of more difficulty, because seizures are matter in fact, whereas suits are matter of record: and it may require more persons to be employed, as at the ports, where is much abuse.

There be other points wherein the officer may be of good use, which may be comprehended in his grant or instructions, wherewith I will not now

trouble your majesty, for I hold these to be the principal.

Thus have I, according to your majesty's reference, certified my opinion of that part of Sir Stephen Proctor's projects, which concerneth penal laws: which I do wholly and most humbly submit to your majesty's high wisdom and judgment, wishing withal that some conference may be had by Mr. Chancellor and the barons and the rest of the learned counsel, to draw the service to a better perfection. And most specially that the travels therein taken may be considered and discerned of by the lord treasurer, whose care and capacity is such, as he doth always either find or choose that which is best for your majesty's service.

The recompence unto the gentleman, it is not my part to presume to touch, otherwise than to put your majesty in remembrance of that proportion, which your majesty is pleased to give to others out of the profits they bring in, and perhaps with a great deal less labour and charge.

ADVICE TO THE KING,

TOUCHING

MR. SUTTON'S ESTATE.

MAY IT PLEASE YOUR MAJESTY,

I FIND it a positive precept of the old law, that there should be no sacrifice without salt: the moral whereof, besides the ceremony, may be, that God is not pleased with the body of a good intention, except it be seasoned with that spiritual wisdom and judgment, as it be not easily subject to be corrupted and perverted: for salt, in the Scripture, is a figure both of wisdom and lasting. This cometh into my mind upon this act of Mr. Sutton, which seemeth to me as a sacrifice without salt; having the materials of a good intention, but not powdered with any such ordinances and institutions as may preserve the same from turning corrupt, or at least from becoming unsavory, and of little use. For though the choice of the feoffees be of the best, yet neither can they always live; and the very nature of the work itself, in the vast and unfit proportions thereof, being apt to provoke a misemployment; it is no diligence of theirs, except there be a digression from that model, that can excuse it from running the same way that gifts of like condition have heretofore done. For to design the Charterhouse, a building fit for a prince's

habitation, for an hospital, is all one as if one should give in alms a rich embroidered cloak to a beggar. And certainly a man may see, "tanquam quæ oculis "cernuntur," that if such an edifice, with six thousand pounds revenue, be erected into one hospital, it will in small time degenerate to be made a preferment of some great person to be master, and he to take all the sweet, and the poor to be stinted, and take but the crumbs; as it comes to pass in divers hospitals of this realm, which have but the names of hospitals, and are only wealthy benefices in respect of the mastership; but the poor, which is the "propter quid," little relieved. And the like hath been the fortune of much of the alms of the Roman religion in their great foundations, which being begun in vain-glory and ostentation, have had their judgment upon them, to end in corruption and abuse. This meditation hath made me presume to write these few lines to your majesty; being no better than good wishes, which your majesty's great wisdom may make something or nothing of.

Wherein I desire to be thus understood, that if this foundation, such as it is, be perfect and good in law, then I am too well acquainted with your majesty's disposition, to advise any course of power or profit that is not grounded upon a right: nay farther, if the defects be such as a court of equity may remedy and cure, then I wish that as St. Peter's shadow did cure diseases, so the very shadow of a good intention may cure defects of that nature. But if there be a right, and birth-right planted in the

heir, and not remediable by courts of equity, and that right be submitted to your majesty, whereby it is both in your power and grace what to do; then I do wish that this rude mass and chaos of a good deed were directed rather to a solid merit, and durable charity, than to a blaze of glory, that will but crackle a little in talk, and quickly extinguish.

And this may be done, observing the species of Mr. Sutton's intent, though varying "in individuo:" for it appears that he had in notion a triple good, an hospital, and a school, and maintaining of a preacher: which individuals refer to these three general heads; relief of poor, advancement of learning, and propagation of religion. Now then if I shall set before your majesty, in every of these three kinds, what it is that is most wanting in your kingdom; and what is like to be the most fruitful and effectual use of such a beneficence, and least like to be perverted; that, I think, shall be no ill scope of my labour, how meanly soever performed; for out of variety represented, election may be best grounded.

Concerning the relief of the poor; I hold some number of hospitals, with competent endowments, will do far more good than one hospital of an exorbitant greatness: for though the one course will be the more seen, yet the other will be the more felt. For if your majesty erect many, besides the observing the ordinary maxim, "Bonum, quo communius, "eo melius," choice may be made of those towns and places where there is most need, and so the remedy may be distributed as the disease is dispersed. Again,

greatness of relief, accumulated in one place, doth rather invite a swarm and surcharge of poor, than relieve those that are naturally bred in that place; like to ill-tempered medicines, that draw more humour to the part than they evacuate from it. But chiefly I rely upon the reason that I touched in the beginning, that in these great hospitals the revenues will draw the use, and not the use the revenues; and so, through the mass of the wealth, they will swiftly tumble down to a misemployment. And if any man say, that in the two hospitals in London there is a precedent of greatness concurring with good employment; let him consider that those hospitals have annual governors, that they are under the superior care and policy of such a state as the city of London; and chiefly, that their revenues consist not upon certainties, but upon casualties and free gifts; which gifts would be withheld, if they appeared once to be perverted; so as it keepeth them in a continual good behaviour and awe to employ them aright; none of which points do match with the present case.

The next consideration may be, whether this intended hospital, as it hath a more ample endowment than other hospitals have, should not likewise work upon a better subject than other poor; as that it should be converted to the relief of maimed soldiers, decayed merchants, householders aged, and destitute churchmen, and the like; whose condition, being of a better sort than loose people and beggars, deserveth both a more liberal stipend and allowance, and some

proper place of relief, not intermingled or coupled with the basest sort of poor; which project, though specious, yet in my judgment, will not answer the designment in the event, in these our times. For certainly few men in any vocation, which have been somebody, and bear a mind somewhat according to the conscience and remembrance of that they have been, will ever descend to that condition, as to profess to live upon alms, and to become a corporation of declared beggars; but rather will choose to live obscurely, and as it were to hide themselves with some private friends: so that the end of such an institution will be, that it will make the place a receptacle of the worst, idlest, and most dissolute persons of every profession, and to become a cell of loiterers, and cast serving-men, and drunkards, with scandal rather than fruit to the commonwealth. And of this kind I can find but one example with us, which is the alms-knights of Windsor; which particular would give a man small encouragement to follow that precedent.

Therefore the best effect of hospitals is, to make the kingdom, if it were possible, capable of that law, that there be no beggar in Israel: for it is that kind of people that is a burden, an eye-sore, a scandal, and a seed of peril and tumult in the state. But chiefly it were to be wished, that such a beneficence towards the relief of the poor were so bestowed, as not only the mere and naked poor should be sustained, but also, that the honest person which hath hard means to live, upon whom the poor are

now charged, should be in some sort eased: for that were a work generally acceptable to the kingdom, if the public hand of alms might spare the private hand of tax: and therefore, of all other employments of that kind, I commend most houses of relief and correction, which are mixt hospitals; where the impotent person is relieved, and the sturdy beggar buckled to work; and the unable person also not maintained to be idle, which is ever joined with drunkenness and impurity, but is sorted with such work as he can manage and perform; and where the uses are not distinguished, as in other hospitals; whereof some are for aged and impotent, and some for children, and some for correction of vagabonds; but are general and promiscuous: so that they may take off poor of every sort from the country as the country breeds them: and thus the poor themselves shall find the provision, and other people the sweetness of the abatement of the tax. Now if it be objected, that houses of correction in all places have not done the good expected, as it cannot be denied, but in most places they have done much good, it must be remembered that there is a great difference between that which is done by the distracted government of justices of peace, and that which may be done by a settled ordinance, subject to a regular visitation, as this may be. And besides, the want hath been commonly in houses of correction of a competent and certain stock, for the materials of the labour, which in this case may be likewise supplied.

Concerning the advancement of learning, I do subscribe to the opinion of one of the wisest and greatest men of your kingdom: That for grammar schools there are already too many, and therefore no providence to add where there is excess: for the great number of schools which are in your highness's realm, doth cause a want, and doth cause likewise an overflow; both of them inconvenient, and one of them dangerous. For by means thereof they find want in the country and towns, both of servants for husbandry, and apprentices for trade: and on the other side, there being more scholars bred, than the state can prefer and employ; and the active part of that life not bearing a proportion to the preparative, it must needs fall out, that many persons will be bred unfit for other vocations, and unprofitable for that in which they are brought up; which fills the realm full of indigent, idle, and wanton people, which are but "materia rerum novarum."

Therefore, in this point, I wish Mr. Sutton's intention were exalted a degree; that that which he meant for teachers of children, your majesty should make for teachers of men; wherein it hath been my ancient opinion and observation, that in the universities of this realm, which I take to be of the best endowed universities of Europe, there is nothing more wanting towards the flourishing state of learning, than the honourable and plentiful salaries of readers in arts and professions. In which point, as your majesty's bounty already hath made a beginning, so this occasion is offered of God to make

a proceeding. Surely, readers in the chair are as the parents in sciences, and deserve to enjoy a condition not inferior to their children that embrace the practical part; else no man will sit longer in the chair, than till he can walk to a better preferment: and it will come to pass as Virgil saith,

"Ut patrum invalidi referant jejunia nati."

For if the principal readers, through the meanness of their entertainment, be but men of superficial learning, and that they shall take their place but in passage, it will make the mass of sciences want the chief and solid dimension, which is depth; and to become but pretty and compendious habits of practice. Therefore I could wish that in both the universities, the lectures as well of the three professions, divinity, law, and physic; as of the three heads of science, philosophy, arts of speech, and the mathematics; were raised in their pensions unto 100*l.* per annum apiece: which though it be not near so great as they are in some other places, where the greatness of the reward doth whistle for the ablest men out of all foreign parts to supply the chair; yet it may be a portion to content a worthy and able man; if he be likewise contemplative in nature, as those spirits are that are fittest for lectures. Thus may learning in your kingdom be advanced to a farther height; learning, I say, which under your majesty, the most learned of kings, may claim some degree of elevation.

Concerning propagation of religion, I shall in

few words set before your majesty three propositions; none of them devices of mine own, otherwise than that I ever approved them; two of which have been in agitation of speech, and the third acted.

The first is a college for controversies, whereby we shall not still proceed single, but shall, as it were, double our files; which certainly will be found in the encounter.

The second is a receipt, I like not the word seminary, in respect of the vain vows, and implicit obedience, and other things tending to the perturbation of states, involved in that term, for converts to the reformed religion, either of youth or othewise; for I doubt not but there are in Spain, Italy, and other countries of the papists, many whose hearts are touched with a sense of those corruptions, and an acknowledgment of a better way; which grace is many times smothered and choked, through a worldly consideration of necessity and want; men not knowing where to have succour and refuge. This likewise I hold a work of great piety, and a work of great consequence; that we also may be wise in our generation; and that the watchful and silent night may be used as well for sowing of good seed, as of tares.

The third is, the imitation of a memorable and religious act of queen Elizabeth; who finding a part of Lancashire to be extremely backward in religion, and the benefices swallowed up in impropriations, did, by decree in the duchy, erect four stipends of 100*l.* per annum apiece for preachers well chosen to

help the harvest, which have done a great deal of good in the parts where they have laboured. Neither do there want other corners in the realm, that would require for a time the like extraordinary help.

Thus have I briefly delivered unto your majesty mine opinion touching the employment of this charity; whereby that mass of wealth, which was in the owner little better than a stack or heap of muck, may be spread over your kingdom to many fruitful purposes; your majesty planting and watering, and God giving the increase.

CERTAIN OBSERVATIONS

UPON

A LIBEL PUBLISHED THIS PRESENT YEAR, 1592.

INTITLED,

A DECLARATION OF THE TRUE CAUSES OF THE GREAT TROUBLES PRESUPPOSED TO BE INTENDED AGAINST THE REALM OF ENGLAND.

It were just and honourable for princes being in wars together, that howsoever they prosecute their quarrels and debates by arms and acts of hostility; yea, though the wars be such, as they pretend the utter ruin and overthrow of the forces and states one of another, yet they so limit their passions as they preserve two things sacred and inviolable; that is, the life and good name each of other. For the wars are no massacres and confusions; but they are the highest trials of right; when princes and states, that acknowledge no superior upon earth, shall put themselves upon the justice of God for the deciding of their controversies by such success, as it shall please him to give on either side. And as in the process of particular pleas between private men, all things ought to be ordered by the rules of civil laws; so in the proceedings of the war, nothing ought to be done against the law of nations, or the law of honour; which laws have ever pronounced these two sorts of men, the one, conspirators against the persons of princes; the other, libellers against their

good fame; to be such enemies of common society as are not to be cherished, no not by enemies. For in the examples of times, which were less corrupted, we find that when in the greatest heats and extremities of wars, there have been made offers of murderous and traitorous attempts against the person of a prince to the enemy, they have been not only rejected, but also revealed: and in like manner, when dishonourable mention hath been made of a prince before an enemy prince, by some that have thought therein to please his humour, he hath shewed himself, contrariwise, utterly distasted therewith, and been ready to contest for the honour of an enemy.

According to which noble and magnanimous kind of proceeding, it will be found, that in the whole course of her majesty's proceeding with the king of Spain, since the amity interrupted, there was never any project by her majesty, or any of her ministers, either moved or assented unto, for the taking away of the life of the said king: neither hath there been any declaration or writing of estate, no nor book allowed, wherein his honour hath been touched or taxed, otherwise than for his ambition; a point which is necessarily interlaced with her majesty's own justification. So that no man needeth to doubt but that those wars are grounded, upon her majesty's part, upon just and honourable causes, which have so just and honourable a prosecution; considering it is a much harder matter when a prince is entered into wars to hold respect then, and not to

be transported with passion, than to make moderate and just resolutions in the beginnings.

But now if a man look on the other part, it will appear that, rather, as it is to be thought, by the solicitation of traitorous subjects, which is the only poison and corruption of all honourable war between foreigners, or by the presumption of his agents and ministers, than by the proper inclination of that king, there hath been, if not plotted and practised, yet at the least comforted, conspiracies against her majesty's sacred person; which nevertheless God's goodness hath used and turned, to shew by such miraculous discoveries into how near and precious care and custody it hath pleased him to receive her majesty's life and preservation. But in the other point it is strange what a number of libellous and defamatory books and writings, and in what variety, with what art and cunning handled, have been allowed to pass through the world in all languages against her majesty and her government; sometimes pretending the gravity and authority of church stories to move belief; sometimes formed into remonstrances and advertisements of estate to move regard; sometimes presented as it were in tragedies of the persecutions of catholics to move pity; sometimes contrived into pleasant pasquils and satires to move sport: so as there is no shape whereinto these fellows have not transformed themselves; nor no humour nor affection in the mind of man to which they have not applied themselves; thereby to in-

sinuate their untruths and abuses to the world. And indeed let a man look into them, and he shall find them the only triumphant lies that ever were confuted by circumstances of time and place; confuted by contrariety in themselves, confuted by the witness of infinite persons that live yet, and have had particular knowledge of the matters; but yet avouched with such asseveration, as if either they were fallen into that strange disease of the mind, which a wise writer describeth in these words, "fingunt simul creduntque;" or as if they had received it as a principal precept and ordinance of their seminaries, "audacter calumniari, semper ali-"quid hæret;" or as if they were of the race which in old time were wont to help themselves with miraculous lies. But when the cause of this is entered into, namely, that there passeth over out of this realm a number of eager and unquiet scholars, whom their own turbulent and humourous nature presseth out to seek their adventures abroad; and that, on the other side, they are nourished rather in listening after news and intelligences, and in whisperings, than in any commendable learning; and after a time, when either their necessitous estate, or their ambitious appetites importune them, they fall on devising how to do some acceptable service to that side which maintaineth them; so as ever when their credit waxeth cold with foreign princes, or that their pensions are ill paid, or some preferment is in sight at which they level, straightways out cometh a libel, pretending thereby to keep in life

the party, which within the realm is contrary to the state, wherein they are as wise as he that thinketh to kindle a fire by blowing the dead ashes; when, I say, a man looketh into the cause and ground of this plentiful yield of libels, he will cease to marvel, considering the concurrence which is, as well in the nature of the seed as in the travel of tilling and dressing; yea, and in the fitness of the season for the bringing up of those infectious weeds.

But to verify the saying of our Saviour, "non "est discipulus super magistrum;" as they have sought to deprave her majesty's government in herself, so have they not forgotten to do the same in her principal servants and counsellors; thinking, belike, that as the immediate invectives against her majesty do best satisfy the malice of the foreigner, so the slander and calumniation of her principal counsellors agreed best with the humours, of some malecontents within the realm; imagining also, that it was like they should be more scattered here, and freelier dispersed; and also should be less odious to those foreigners which were not merely partial and passionate, who have for the most part in detestation the traitorous libellings of subjects directly against their natural prince.

Amongst the rest in this kind, there hath been published this present year of 1592, a libel that giveth place to none of the rest in malice and untruths; though inferior to most of them in penning and style; the author having chosen the vein of a Lucianist, and yet being a counterfeit even in that kind. This

libel is intitled, "A declaration of the true causes of "the great troubles presupposed to be intended "against the realm of England;" and hath a semblance as if it were bent against the doings of her majesty's ancient and worthy counsellor the lord Burleigh; whose carefulness and pains her majesty hath used in her counsels and actions of this realm for these thirty-four years' space, in all dangerous times, and amidst many and mighty practices; and with such success as our enemies are put still to their paper-shot of such libels as these; the memory of whom will remain in this land, when all these libels shall be extinct and forgotten; according to the Scripture, "Memoria justi cum laudibus, at impiorum nomen putrescet." But it is more than evident, by the parts of the same book, that the author's malice was to her majesty and her government, as may especially appear in this, that he charged not his lordship with any particular actions of his private life, such power had truth, whereas the libels made against other counsellors have principally insisted upon that part: but hath only wrested and detorted such actions of state, as in times of his service have been managed; and depraving them, hath ascribed and imputed to him the effects that have followed; indeed, to the good of the realm, and the honour of her majesty, though sometimes to the provoking of the malice, but abridging of the power and means of desperate and incorrigible subjects.

All which slanders, as his lordship might justly despise, both for their manifest untruths, and for the

baseness and obscurity of the author; so nevertheless, according to the moderation which his lordship useth in all things, never claiming the privilege of his authority, when it is question of satisfying the world, he hath been content that they be not passed over altogether in silence; whereupon I have, in particular duty to his lordship, amongst others that do honour and love his lordship, and that have diligently observed his actions, and in zeal of truth, collected, upon the reading of the said libel, certain observations, not in form of a just answer, lest I should fall into the error whereof Solomon speaketh thus, "Answer not a fool in his own kind, lest "thou also be like him;" but only to discover the malice, and to reprove and convict the untruths thereof.

The points, that I have observed upon the reading of this libel, are these following:

I. Of the scope or drift of the libeller.

II. Of the present estate of this realm of England, whether it may be truly avouched to be prosperous or afflicted.

III. Of the proceedings against the pretended catholics, whether they have been violent, or moderate, and necessary.

IV. Of the disturbance of the quiet of Christendom, and to what causes it may be justly imputed.

V. Of the cunning of the libeller, in palliation of his malicious invective against her majesty and the state, with pretence of taxing only the actions of the lord Burleigh.

VI. Certain true general notes upon the actions of the lord Burleigh.

VII. Of divers particular untruths and abuses dispersed through the libel.

VIII. Of the height of impudency that these men are grown into, in publishing and avouching untruths; with a particular recital of some of them for an assay.

I. Of the scope or drift of the libeller.

It is good advice, in dealing with cautelous and malicious persons, whose speech is ever at distance with their meanings, "non quid dixerint, sed quo "spectarint, videndum:" a man is not to regard what they affirm, or what they hold; but what they would convey under their pretended discovery, and what turn they would serve. It soundeth strangely in the ears of an Englishman, that the miseries of the present state of England exceed them of former times whatsoever. One would straightway think with himself, doth this man believe what he saith? Or, not believing it, doth he think it possible to make us believe it? Surely, in my conceit, neither of both; but his end, no doubt, was to round the pope and the king of Spain in the ear, by seeming to tell a tale to the people of England. For such books are ever wont to be translated into divers languages; and, no doubt, the man was not so simple as to think he could persuade the people of England the contrary of what they taste and feel. But he thought he might better abuse the states

abroad, if he directed his speech to them who could best convict him, and disprove him if he said untrue; so that as Livy saith in the like case, "Ætolos magis, "coram quibus verba facerent, quam ad quos, pensi "habere;" That the Ætolians, in their tale, did more respect those who did overhear them, than those to whom they directed their speech: so in this manner this fellow cared not to be counted a liar by all English, upon price of deceiving of Spain and Italy; for it must be understood, that it hath been the general practice of this kind of men many years, of the one side, to abuse the foreign estates, by making them believe that all is out of joint and ruinous here in England, and that there is great part ready to join with the invader; and on the other side, to make the evil subjects of England believe of great preparations abroad, and in great readiness to be put in act, and so to deceive on both sides: and this I take to be his principal drift. So again, it is an extravagant and incredible conceit, to imagine that all the conclusions and actions of estate which have passed during her majesty's reign, should be ascribed to one counsellor alone; and to such an one as was never noted for an imperious or over-ruling man; and to say, that though he carried them not by violence, yet he compassed them by device, there is no man of judgment that looketh into the nature of these times, but will easily descry that the wits of these days are too much refined for any man to walk invisible, or to make all the world his instruments; and therefore, no not in this point

assuredly, the libeller spake as he thought; but this he foresaw, that the imputation of cunning doth breed suspicion, and the imputation of greatness and sway doth breed envy; and therefore finding where he was most wrong, and by whose policy and experience their plots were most crossed, the mark he shot at was to see whether he could heave at his lordship's authority, by making him suspected to the queen, or generally odious to the realm; knowing well enough for the one point, that there are not only jealousies, but certain revolutions in princes' minds: so that it is a rare virtue in the rarest princes to continue constant to the end in their favours and employments. And knowing for the other point, that envy ever accompanieth greatness, though never so well deserved: and that his lordship hath always marched a round and a real course in service; and as he hath not moved envy by pomp and ostentation, so hath he never extinguished it by any popular or insinuative carriage of himself: and this no doubt was his second drift.

A third drift was, to assay if he could supplant and weaken, by this violent kind of libelling, and turning the whole imputation upon his lordship, his resolution and courage; and to make him proceed more cautelously, and not so throughly and strongly against them; knowing his lordship to be a politic man, and one that hath a great stake to lose.

Lastly, lest, while I discover the cunning and art of this fellow, I should make him wiser than he was, I think a great part of this book was passion;

" difficile est tacere, cum doleas." The humours of these men being of themselves eager and fierce, have, by the abort and blasting of their hopes, been blinded and enraged. And surely this book is, of all that sort that have been written, of the meanest workmanship; being fraughted with sundry base scoffs, and cold amplifications, and other characters of despite; but void of all judgment or ornament.

II. Of the present estate of this realm of England, whether it may be truly avouched to be prosperous or afflicted.

The benefits of almighty God upon this land, since the time that in his singular providence he led as it were by the hand, and placed in the kingdom, his servant our queen Elizabeth, are such, as not in boasting, or in confidence of ourselves, but in praise of his holy name, are worthy to be both considered and confessed, yea, and registered in perpetual memory: notwithstanding, I mean not after the manner of a panegyric to extol the present time: it shall suffice only that those men, that through the gall and bitterness of their own heart have lost their taste and judgment, and would deprive God of his glory, and us of our senses, in affirming our condition to be miserable, and full of tokens of the wrath and indignation of God, be reproved.

If then it be true, that " nemo est miser, aut felix, nisi comparatus;" whether we shall, keeping ourselves within the compass of our own island, look into the memories of times past, or at this present

time take a view of other states abroad in Europe, we shall find that we need not give place to the happiness either of ancestors or neighbours. For if a man weigh well all the parts of state and religion, laws, administration of justice, policy of government, manners, civility, learning and liberal sciences, industry and manual arts, arms and provisions of wars for sea and land, treasure, traffic, improvement of the soil, population, honour and reputation, it will appear that, taking one part with another, the state of this nation was never more flourshing.

It is easy to call to remembrance, out of histories, the kings of England which have in more ancient times enjoyed greatest happiness; besides her majesty's father and grandfather, that reigned in rare felicity, as is fresh in memory. They have been king Henry I. king Henry II. king Henry III. king Edward I. king Edward III. king Henry V. All which have been princes of royal virtue, great felicity, and famous memory. But it may be truly affirmed, without derogation to any of these worthy princes, that whatsoever we find in libels, there is not to be found in the English chronicles, a king that hath, in all respects laid together, reigned with such felicity as her majesty hath done. For as for the first three Henries, the first came in too soon after a conquest; the second too soon after an usurpation; and the third too soon after a league, or barons war, to reign with security and contentation. King Henry I. also had unnatural wars with his brother Robert, wherein much nobility was consumed: he

had therewithal tedious wars in Wales; and was not without some other seditions and troubles; as namely the great contestation of his prelates. King Henry II. his happiness was much deformed by the revolt of his son Henry, after he had associated him, and of his other sons. King Henry III. besides his continual wars in Wales, was after forty-four years' reign unquieted with intricate commotions of his barons; as may appear by the mad parliament held at Oxford, and the acts thereupon ensuing. His son Edward I. had a more flourishing time than any of the other; came to his kingdom at ripe years, and with great reputation, after his voyage into the Holy Land, and was much loved and obeyed, contrived his wars with great judgment: first having reclaimed Wales to a settled allegiance, and being upon the point of uniting Scotland. But yet I suppose it was more honour for her majesty to have so important a piece of Scotland in her hand, and the same with such justice to render up, than it was for that worthy king to have advanced in such forwardness the conquest of that nation. And for king Edward III. his reign was visited with much sickness and mortality, so as they reckoned in his days three several mortalities; one in the twenty-second year, another in the thirty-fifth year, and the last in the forty-third year of his reign; and being otherwise victorious and in prosperity, was by that only cross more afflicted, than he was by the other prosperities comforted. Besides, he entered hardly; and again, according to the verse, "cedebant ultima primis," his

latter times were not so prosperous. And for king Henry V. as his success was wonderful, so he wanted continuance; being extinguished after ten years' reign in the prime of his fortunes.

Now for her majesty, we will first speak of the blessing of continuance, as that which wanted in the happiest of these kings; and is not only a great favour of God unto the prince, but also a singular benefit unto the people; for that sentence of the Scripture, "misera natio cum multi sunt principes "ejus," is interpreted not only to extend to divisions and distractions in government, but also to frequent changes in succession; considering, that the change of a prince bringeth in many charges, which are harsh and unpleasant to a great part of the subjects. It appeareth then, that of the line of five hundred and fourscore years, and more, containing the number of twenty-two kings, God hath already prolonged her majesty's reign to exceed sixteen of the said two and twenty; and by the end of this present year, which God prosper, she shall attain to be equal with two more: during which time there have deceased four emperors, as many French kings; twice so many bishops of Rome. Yea, every state in Christendom, except Spain, have received sundry successions. And for the king of Spain, he is waxed so infirm, and thereby so retired, as the report of his death serveth for every year's news: whereas her majesty, thanks be given to God, being nothing decayed in vigour of health and strength, was never more able to supply and sustain the weight of her

affairs, and is, as far as standeth with the dignity of her majesty's royal state, continually to be seen, to the great comfort and heart-ease of her people.

Secondly, we will mention the blessing of health: I mean generally of the people, which was wanting in the reign of another of these kings; which else deserved to have the second place in happiness, which is one of the great favours of God towards any nation. For as there be three scourges of God, war, famine, and pestilence; so are there three benedictions, peace, plenty, and health. Whereas therefore this realm hath been visited in times past with sundry kinds of mortalities, as pestilences, sweats, and other contagious diseases, it is so, that in her majesty's times, being of the continuance aforesaid, there was only, towards the beginning of her reign, some sickness, between June and February, in the city; but not dispersed into any other part of the realm, as was noted; which we call yet the great plague; because that though it was nothing so grievous and so sweeping as it hath been sundry times heretofore, yet it was great in respect of the health which hath followed since; which hath been such, especially of late years, as we began to dispute and move questions of the causes whereunto it should be ascribed, until such time as it pleased God to teach us that we ought to ascribe it only to his mercy, by touching us a little this present year, but with a very gentle hand; and such as it hath pleased him since to remove. But certain it is, for so many years together, notwithstanding the great

pestering of people in houses, the great multitude of strangers, and the sundry voyages by seas, all which have been noted to be causes of pestilence, the health universal of the people was never so good.

The third blessing is that which all the politic and fortunate kings before recited have wanted; that is, peace: for there was never foreigner since her majesty's reign, by invasion or incursion of moment, that took any footing within the realm of England. One rebellion there hath been only, but such an one as was repressed within the space of seven weeks, and did not waste the realm so much as by the destruction or depopulation of one poor town. And for wars abroad, taking in those of Leith, those of Newhaven, the second expedition into Scotland, the wars of Spain, which I reckon from the year eighty-six or eighty-seven, (before which time neither had the king of Spain withdrawn his ambassadors here residing; neither had her majesty received into protection the United Provinces of the Low Countries,) and the aid of France; they have not occupied in time a third part of her majesty's reign; nor consumed past two of any noble house; whereof France took one, and Flanders another; and very few besides of quality or appearance. They have scarce mowed down the overcharge of the people within the realm. It is therefore true, that the kings aforesaid, and others her majesty's progenitors, have been victorious in their wars, and have made many famous and memorable voyages and expeditions into sundry parts; and that her

majesty, contrariwise, from the beginning, put on a firm resolution to content herself within those limits of her dominions which she received, and to entertain peace with her neighbour princes; which resolution she hath ever since, notwithstanding she hath had rare opportunities, just claims and pretences, and great and mighty means, sought to continue. But if this be objected to be the less honourable fortune; I answer, that ever amongst the heathen, who held not the expence of blood so precious as Christians ought to do, the peaceable government of Augustus Cæsar was ever as highly esteemed as the victories of Julius his uncle; and that the name of "pater patriæ" was ever as honourable as that of "propagator imperii." And this I add further, that during this inward peace of so many years in the actions of war before mentioned, which her majesty, either in her own defence or in just and honourable aids, hath undertaken, the service hath been such as hath carried no note of a people, whose militia hath degenerated through long peace; but hath every way answered the ancient reputation of the English arms.

The fourth blessing is plenty and abundance: and first for grain and all victuals, there cannot be more evident proof of the plenty than this; that whereas England was wont to be fed by other countries from the east, it sufficeth now to feed other countries; so as we do many times transport and serve sundry foreign countries; and yet there was never the like multitude of people to eat it

within the realm. Another evident proof thereof may be, that the good yields of corn which have been, together with some toleration of vent, hath of late time invited and enticed men to break up more ground, and to convert it to tillage, than all the penal laws for that purpose made and enacted could ever by compulsion effect. A third proof may be, that the prices of grain and victual were never of late years more reasonable. Now for arguments of the great wealth in all other respects, let the points following be considered.

There was never the like number of fair and stately houses as have been built and set up from the ground since her majesty's reign; insomuch, that there have been reckoned in one shire that is not great, to the number of thirty-three, which have been all new built within that time; and whereof the meanest was never built for two thousand pounds.

There were never the like pleasures of goodly gardens and orchards, walks, pools, and parks, as do adorn almost every mansion-house.

There was never the like number of beautiful and costly tombs and monuments which are erected in sundry churches, in honourable memory of the dead.

There was never the like quantity of plate, jewels, sumptuous moveables, and stuff, as is now within the realm.

There was never the like quantity of waste and

unprofitable ground, inned, reclaimed, and improved.

There was never the like husbanding of all sorts of grounds by fencing, manuring, and all kinds of good husbandry.

The towns were never better built nor peopled; nor the principal fairs and markets ever better customed or frequented.

The commodities and ease, of rivers cut by hand, and brought into a new channel; of piers that have been built; of waters that have been forced and brought against the ground, were never so many.

There was never so many excellent artificers, nor so many new handy-crafts used and exercised; nor new commodities made within the realm; sugar, paper, glass, copper, divers silks, and the like.

There was never such complete and honourable provision of horse, armour, weapons, ordnance of the war.

The fifth blessing hath been the great population and multitude of families increased within her majesty's days: for which point I refer myself to the proclamations of restraint of building in London, the inhibition of inmates of sundry cities, the restraint of cottages by act of parliament, and sundry other tokens of record of the surcharge of people.

Besides these parts of a government, blessed from God, wherein the condition of the people hath been more happy in her majesty's times, than in the times of her progenitors, there are certain singulari-

ties and particulars of her majesty's reign; wherein I do not say, that we have enjoyed them in a more ample degree and proportion than in former ages, as it hath fallen out in the points before mentioned, but such as were in effect unknown and untasted heretofore. As first, the purity of religion, which is a benefit inestimable, and was in the time of all former princes, until the days of her majesty's father of famous memory, unheard of. Out of which purity of religion have since ensued, beside the principal effect of the true knowledge and worship of God, three points of great consequence unto the civil estate.

One, the stay of a mighty treasure within the realm, which in foretimes was drawn forth to Rome. Another, the dispersion and distribution of those revenues, amounting to a third part of the land of the realm, and that of the goodliest and the richest sort, which heretofore was unprofitably spent in monasteries, into such hands as by whom the realm receiveth, at this day, service and strength; and many great houses have been set up and augmented. The third, the managing and enfranchising of the regal dignity from the recognition of a foreign superior. All which points, though begun by her father, and continued by her brother, were yet nevertheless, after an eclipse or intermission, restored and re-established by her majesty's self.

Secondly, the fineness of money: for as the purging away of the dross of religion, the heavenly treasure, was common to her majesty with her father

and her brother, so the purging of the base-money, the earthly treasure, hath been altogether proper to her majesty's own times; whereby our moneys bearing the natural estimation of the stamp or mark, both every man resteth assured of his own value, and free from the losses and deceits which fall out in other places upon the rising and falling of moneys.

Thirdly, the might of the navy, and augmentation of the shipping of the realm; which, by politic constitutions for maintenance of fishing, and the encouragement and assistance given to the undertakers of new discoveries and trades by sea, is so advanced, as this island is become, as the natural site thereof deserveth, the lady of the sea.

Now, to pass from the comparison of time to the comparison of place, we may find in the states abroad cause of pity and compassion in some; but of envy or emulation in none; our condition being, by the good favour of God, not inferior to any.

The kingdom of France, which, by reason of the seat of the empire of the west, was wont to have the precedence of the kingdoms of Europe, is now fallen into those calamities, that, as the prophet saith, "From the crown of the head to the sole of the "foot, there is no whole place." The divisions are so many, and so intricate, of protestants and catholics, royalists and leaguers, Bourbonists and Lorainists, patriots and Spanish; as it seemeth God hath some great work to bring to pass upon that nation: yea, the nobility divided from the third estate, and

the towns from the field. All which miseries, truly to speak, have been wrought by Spain and the Spanish faction.

The Low Countries, which were, within the age of a young man, the richest, the best peopled, and the best built plots of Europe, are in such estate, as a country is like to be in, that hath been the seat of thirty years' war: and although the sea-provinces be rather increased in wealth and shipping than otherwise; yet they cannot but mourn for their distraction from the rest of their body.

The kingdom of Portugal, which of late times, through their merchandizing and places in the East Indies, was grown to be an opulent kingdom, is now at the last, after the unfortunate journey of Afric, in that state as a country is like to be, that is reduced under a foreigner by conquest; and such a foreigner as hath his competitor in title, being a natural Portugal and no stranger; and having been once in possession, yet in life; whereby his jealousy must necessarily be increased, and through his jealousy their oppression: which is apparent, by the carrying of many noble families out of their natural countries to live in exile, and by putting to death a great number of noblemen, naturally born to have been principal governors of their countries. These are three afflicted parts of Christendom; the rest of the states enjoy either prosperity or tolerable condition.

The kingdom of Scotland, though at this present, by the good regiment and wise proceeding of the

king, they enjoy good quiet; yet since our peace it hath passed through no small troubles, and remaineth full of boiling and swelling humours; but like, by the maturity of the said king every day increasing, to be repressed.

The kingdom of Poland is newly recovered out of great wars about an ambiguous election. And besides, is a state of that composition, that their king being elective, they do commonly choose rather a stranger than one of their own country: a great exception to the flourishing estate of any kingdom.

The kingdom of Swedeland, besides their foreign wars upon their confines, the Muscovites and the Danes, hath been also subject to divers intestine tumults and mutations, as their stories do record.

The kingdom of Denmark hath had good times, especially by the good government of the late king, who maintained the profession of the gospel; but yet greatly giveth place to the kingdom of England, in climate, wealth, fertility, and many other points both of honour and strength.

The estates of Italy, which are not under the dominion of Spain, have had peace equal in continuance with ours, except in regard of that which hath passed between them and the Turk, which hath sorted to their honour and commendation; but yet they are so bridled and over-awed by the Spaniard, that possesseth the two principal members thereof, and that in the two extreme parts, as they be like quillets of freehold, being intermixed in the midst of a great honour or lordship; so as their

quiet is intermingled, not with jealousy alone, but with restraint.

The states of Germany have had for the most part peaceable times; but yet they yield to the state of England; not only in the great honour of a great kingdom, they being of a mean style and dignity, but also in many other respects both of wealth and policy.

The state of Savoy having been in the old duke's time governed in good prosperity, hath since (notwithstanding their new great alliance with Spain, whereupon they waxed insolent, to design to snatch up some piece of France, after the dishonourable repulse from the siege of Geneva) been ofter distressed by a particular gentleman of Dauphiny; and at this present day the duke feeleth, even in Piedmont beyond the mountains, the weight of the same enemy; who hath lately shut up his gates and common entries between Savoy and Piedmont.

So as hitherto I do not see but that we are as much bound to the mercies of God as any other nation; considering that the fires of dissension and oppression in some parts of Christendom, may serve us for lights to shew us our happiness; and the good estates of other places, which we do congratulate with them for, is such, nevertheless, as doth not stain and exceed ours; but rather doth still leave somewhat, wherein we may acknowledge an ordinary benediction of God.

Lastly, we do not much emulate the greatness and glory of the Spaniards; who having not only excluded the purity of religion, but also fortified

against it, by their device of the inquisition, which is a bulwark against the entrance of the truth of God; having, in recompence of their new purchase of Portugal, lost a great part of their ancient patrimonies of the Low Countries, being of far greater commodity and value, or at the least holding part thereof in such sort as most of their other revenues are spent there upon their own; having lately, with much difficulty, rather smoothed and skinned over, than healed and extinguished the commotions of Arragon; having rather sowed troubles in France, than reaped assured fruit thereof unto themselves; having from the attempt of England received scorn and disreputation; being at this time with the states of Italy rather suspected than either loved or feared; having in Germany, and elsewhere, rather much practice, than any sound intelligence or amity; having no such clear succession as they need object, and reproach the uncertainty thereof unto another nation; have in the end won a reputation rather of ambition than justice; and, in the pursuit of their ambition, rather of much enterprising than of fortunate atchieving; and in their enterprising, rather of doing things by treasure and expence, than by forces and valour.

Now that I have given the reader a taste of England respectively, and in comparison of the times past, and of the states abroad, I will descend to examine the libeller's own divisions, whereupon let the world judge how easily and clean this ink, which he hath cast in our faces, is washed off.

The first branch of the pretended calamities of

England, is the great and wonderful confusion which, he saith, is in the state of the Church; which is subdivided again into two parts: the one, the prosecutions against the catholics; the other, the discords and controversies amongst ourselves: the former of which two parts I have made an article by itself; wherein I have set down a clear and simple narration of the proceedings of state against that sort of subjects; adding this by the way, that there are two extremities in state concerning the causes of faith and religion; that is to say, the permission of the exercises of more religions than one, which is a dangerous indulgence and toleration; the other is the entering and sifting into men's consciences when no overt scandal is given, which is rigorous and strainable inquisition; and I avouch the proceedings towards the pretended catholics to have been a mean between these two extremities, referring the demonstration thereof unto the aforesaid narration in the articles following.

Touching the divisions in our Church, the libeller affirmeth that the protestantical Calvinism, for so it pleaseth him with very good grace to term the religion with us established, is grown contemptible, and detected of idolatry, heresy, and many other superstitious abuses, by a purified sort of professors of the same gospel. And this contention is yet grown to be more intricate, by reason of a third kind of gospellers called Brownists: who, being directed by the great fervour of the unholy ghost, do expressly affirm, that the protestantical Church

of England is not gathered in the name of Christ, but of Antichrist; and that if the prince or magistrate under her do refuse or defer to reform the Church, the people may, without her consent, take the reformation into their own hands: and hereto he addeth the fanatical pageant of Hacket. And this is the effect of this accusation in this point.

For answer whereunto, first, it must be remembered that the Church of God hath been in all ages subject to contentions and schisms: the tares were not sown but where the wheat was sown before. Our Saviour Christ delivered it for an ill note to have outward peace; saying, "when a strong "man is in possession of the house," meaning the devil, "all things are in peace." It is the condition of the Church to be ever under trials; and there are but two trials; the one of persecution, the other of scandal and contention; and when the one ceaseth, the other succeedeth: nay, there is scarce any one epistle of St. Paul's unto the churches, but containeth some reprehension of unnecessary and schismatical controversies. So likewise in the reign of Constantine the Great, after the time that the Church had obtained peace from persecution, straight entered sundry questions and controversies, about no less matters than the essential parts of the faith, and the high mysteries of the Trinity. But reason teacheth us, that in ignorance and implied belief it is easy to agree, as colours agree in the dark: or if any country decline into atheism, then controversies wax dainty, because men do think religion scarce

worth the falling out for; so as it is weak divinity to account controversies an ill sign in the Church.

It is true that certain men, moved with an inconsiderate detestation of all ceremonies or orders, which were in use in the time of the Roman religion, as if they were without difference superstitious or polluted, and led with an affectionate imitation of the government of some protestant churches in foreign states; have sought by books and preaching, indiscreetly, and sometimes undutifully, to bring in an alteration in the external rites and policy of the Church; but neither have the grounds of the controversies extended unto any point of faith; neither hath the pressing and prosecution exceeded, in the generality, the nature of some inferior contempts: so as they have been far from heresy and sedition, and therefore rather offensive than dangerous to the Church or state.

And as for those which we call Brownists, being, when they were at the most, a very small number of very silly and base people, here and there in corners dispersed, they are now, thanks be to God, by the good remedies that have been used, suppressed and worn out; so as there is scarce any news of them. Neither had they been much known at all, had not Brown their leader written a pamphlet, wherein, as it came into his head, he inveighed more against logic and rhetoric, than against the state of the Church, which writing was much read; and had not also one Barrow, being a gentleman of a good house, but one that lived in London at

ordinaries, and there learned to argue in table-talk, and so was very much known in the city and abroad, made a leap from a vain and libertine youth, to a preciseness in the highest degree; the strangeness of which alteration made him very much spoken of; the matter might long before have breathed out. And here I note an honesty and discretion in the libeller, which I note no where else; in that he did forbear to lay to our charge the sect of the Family of Love; for, about twelve years since, there was creeping in, in some secret places of the realm, indeed a very great heresy, derived from the Dutch, and named as was before said; which since, by the good blessing of God, and by the good strength of our Church, is banished and extinct. But so much we see, that the diseases wherewith our Church hath been visited, whatsoever these men say, have either not been malign and dangerous, or else they have been as blisters in some small ignoble part of the body, which have soon after fallen and gone away. For such also was the phrenetical and fanatical, for I mean not to determine it, attempt of Hacket, who must needs have been thought a very dangerous heretic, that could never get but two disciples; and those, as it should seem, perished in their brain; and a dangerous commotioner, that in so great and populous a city as London is, could draw but those same two fellows, whom the people rather laughed at as a may-game, than took any heed of what they did or said: so as it was very true that an honest poor woman said when she saw

Hacket out of a window pass to his execution; said she to herself, "It was foretold that in the latter "days there should come those that have deceived "many; but in faith thou hast deceived but few."

But it is manifest untruth which the libeller setteth down, that there hath been no punishment done upon those which in any of the foresaid kinds have broken the laws, and disturbed the Church and state; and that the edge of the law hath been only turned upon the pretended catholics: for the examples are very many, where, according to the nature and degree of the offence, the correction of such offenders hath not been neglected.

These be the great confusions whereof he hath accused our Church, which I refer to the judgment of an indifferent and understanding person, how true they be: my meaning is not to blanch or excuse any fault of our Church; nor on the other side to enter into commemoration, how flourishing it is in great and learned divines, or painful and excellent preachers; let men have the reproof of that which is amiss, and God the glory of that which is good. And so much for the first branch.

In the second branch, he maketh great musters and shews of the strength and multitude of the enemies of this state; declaring in what evil terms and correspondence we stand with foreign states, and how desolate and destitute we are of friends and confederates; doubting belike, how he should be able to prove and justify his assertion touching the present miseries, and therefore endeavouring at the

least to maintain, that the good estate which we enjoy, is yet made somewhat bitter by reason of many terrors and fears. Whereupon entering into consideration of the security, wherein not by our own policy, but by the good providence and protection of God, we stand at this time, I do find it to be a security of that nature and kind, which Iphicrates the Athenian did commend; who being a commissioner to treat with the state of Sparta upon conditions of peace, and hearing the other side make many propositions touching security, interrupted them and told them, there was but one manner of security whereupon the Athenians could rest; which was, if the deputies of the Lacedæmonians could make it plain unto them, that, after these and these things parted withal, the Lacedæmonians should not be able to hurt them though they would. So it is with us, as we have not justly provoked the hatred or enmity of any other state, so howsoever that be, I know not at this time the enemy that hath the power to offend us though he had the will.

And whether we have given just cause of quarrel or offence, it shall be afterwards touched in the fourth article, touching the true causes of the disturbance of the quiet of Christendom, as far as it is fit to justify the actions of so high a prince upon the occasion of such a libel as this. But now concerning the power and forces of any enemy, I do find that England hath sometimes apprehended with jealousy the confederation between France and Scotland; the

one being upon the same continent that we are, and breeding a soldier of puissance and courage, not much differing from the English: the other a kingdom very opulent, and thereby able to sustain wars, though at very great charge; and having a brave nobility; and being a near neighbour. And yet of this conjunction there never came any offence of moment: but Scotland was ever rather used by France as a diversion of an English invasion upon France, than as a commodity of a French invasion upon England. I confess also, that since the unions of the kingdom of Spain, and during the time the kingdom of France was in his entire, a conjunction of those two potent kingdoms against us might have been of some terror to us. But now it is evident, that the state of France is such as both those conjunctions are become impossible: it resteth that either Spain with Scotland should offend us, or Spain alone. For Scotland, thanks be to God, the amity and intelligence is so sound and secret between the two crowns, being strengthened by consent in religion, nearness of blood, and continual good offices reciprocally on either side, as the Spaniard himself, in his own plot, thinketh it easier to alter and overthrow the present state of Scotland than to remove and divide it from the amity of England. So as it must be Spain alone that we should fear, which should seem, by reason of its spacious dominions, to be a great overmatch. The conceit whereof maketh me call to mind the resemblance of an ancient writer in physic; who, labouring to persuade that

a physician should not doubt sometimes to purge his patient, though he seem very weak, entereth into a distinction of weakness; and saith, there is a weakness of spirit, and a weakness of body; the latter whereof he compareth unto a man that were otherwise very strong, but had a great pack on his neck, so great as made him double again, so as one might thrust him down with his finger: which similitude and distinction both may be fitly applied to matter of state; for some states are weak through want of means, and some weak through excess of burthen; in which rank I do place the state of Spain, which having outcompassed itself in embracing too much; and being itself but a barren seed-plot of soldiers, and much decayed and exhausted of men by the Indies, and by continual wars; and as to the state of their treasure, being indebted and engaged before such times as they waged so great forces in France, and therefore much more since, is not in brief an enemy to be feared by a nation seated, manned, furnished, and policed as is England.

Neither is this spoken by guess, for the experience was substantial enough, and of fresh memory in the late enterprise of Spain upon England: what time all that goodly shipping, which in that voyage was consumed, was complete; what time his forces in the Low-Countries were also full and entire; which now are wasted to a fourth part; what time also he was not intangled with the matters of France, but was rather like to receive assistance than impediment from his friends there, in respect of the great

vigour wherein the league then was, while the duke of Guise then lived; and yet nevertheless this great preparation passed away like a dream. The invincible navy neither took any one barque of ours, neither yet once offered to land; but after they had been well beaten and chased, made a perambulation about the northern seas; ennobling many coasts with wrecks of mighty ships; and so returned home with greater derision than they set forth with expectation.

So as we shall not need much confederacies and succours, which he saith we want for breaking of the Spanish invasion, no, though the Spaniard should nestle in Britain, and supplant the French, and get some port-towns into their hands there, which is yet far off, yet shall he never be so commodiously seated to annoy us, as if he had kept the Low-countries: and we shall rather fear him as a wrangling neighbour, that may trespass now and then upon some straggling ships of ours, than as an invader. And as for our confederacies, God hath given us both means and minds to tender and relieve the states of others; and therefore our confederacies are rather of honour than such as we depend upon. And yet nevertheless the Apostatas and Huguenots of France on the one part, for so he termeth the whole nobility in a manner of France, among the which a great part is of his own religion; which maintain the clear and unblemished title of their lawful and natural king against the seditious populace, and the beer-brewers and basket-makers of Holland and Zealand,

as he also terms them, on the other, have almost bandied away between them all the duke of Parma's forces; and I suppose the very mines of the Indies will go low, or ever the one be ruined, or the other recovered. Neither again desire we better confederacies and leagues than Spain itself hath provided for us: "Non enim verbis fœdera confirmantur, sed "iisdem utilitatibus." We know to how many states the king of Spain is odious and suspected: and for ourselves we have incensed none by our injuries, nor made any jealous of our ambition: these are in rules of policy the firmest contracts.

Let thus much be said in answer of the second branch, concerning the number of exterior enemies: wherein my meaning is nothing less than to attribute our felicity to our policy; or to nourish ourselves in the humour of security. But I hope we shall depend upon God and be vigilant; and then it will be seen to what end these false alarms will come.

In the third branch of the miseries of England, he taketh upon him to play the prophet, as he hath in all the rest played the poet; and will needs divine or prognosticate the great troubles whereunto this realm shall fall after her majesty's times; as if he that hath so singular a gift in lying of the present time and times past, had nevertheless an extraordinary grace in telling truth of the time to come; or, as if the effect of the pope's curses of England were upon better advice adjourned to those days. It is true, it will be misery enough for this realm, whensoever it shall be, to lose such a sovereign: but

for the rest, we must repose ourselves upon the good pleasure of God. So it is an unjust charge in the libeller to impute an accident of state to the fault of the government.

It pleaseth God sometimes, to the end to make men depend upon him the more, to hide from them the clear sight of future events; and to make them think that full of uncertainties which proveth certain and clear: and sometimes, on the other side, to cross men's expectations, and to make them full of difficulty and perplexity in that which they thought to be easy and assured. Neither is it any new thing for the titles of succession in monarchies to be at times less or more declared. King Sebastian of Portugal, before his journey into Afric, declared no successor. The cardinal, though he were of extreme age, and were much importuned by the king of Spain, and knew directly of six or seven competitors to that crown, yet he rather established I know not what interims, than decided the titles, or designed any certain successor. The dukedom of Ferrara is at this day, after the death of the prince that now liveth, uncertain in the point of succession: the kingdom of Scotland hath declared no successor. Nay, it is very rare in hereditary monarchies, by any act of state, or any recognition or oath of the people in the collateral line, to establish a successor. The duke of Orleans succeeded Charles VIII. of France, but was never declared successor in his time. Monsieur d'Angulesme also succeeded him, but without any designation. Sons of kings themselves

oftentimes, through desire to reign and to prevent their time, wax dangerous to their parents: how much more cousins in a more remote degree? It is lawful, no doubt, and honourable, if the case require, for princes to make an establishment: but, as it was said, it is rarely practised in the collateral line. Trajan, the best emperor of Rome, of an heathen, that ever was, at what time the emperors did use to design successors, not so much to avoid the uncertainty of succession, as to the end, to have "parti-"cipes curarum" for the present time, because their empire was so vast; at what time also adoptions were in use, and himself had been adopted; yet never designed a successor, but by his last will and testament, which also was thought to be suborned by his wife Plotina in the favour of her lover Adrian.

You may be sure that nothing hath been done to prejudice the right; and there can be but one right. But one thing I am persuaded of, that no king of Spain, nor bishop of Rome, shall umpire or promote any beneficiary, or feodatory king, as they designed to do; even when the Scots queen lived, whom they pretended to cherish. I will not retort the matter of succession upon Spain, but use that modesty and reverence, that belongeth to the majesty of so great a king, though an enemy. And so much for this third branch.

The fourth branch he maketh to be touching the overthrow of the nobility and the oppression of the people: wherein though he may percase abuse the

simplicity of any foreigner; yet to an Englishman, or any that heareth of the present condition of England, he will appear to be a man of singular audacity, and worthy to be employed in the defence of any paradox. And surely if he would needs have defaced the general state of England, at this time, he should in wisdom rather have made some frierly declamation against the excess of superfluity and delicacy of our times, than to have insisted upon the misery and poverty and depopulation of the land, as may sufficiently appear by that which hath been said.

But nevertheless, to follow this man in his own steps: first, concerning the nobility; it is true, that there have been in ages past, noblemen, as I take it, both of greater possessions and of greater command and sway than any are at this day. One reason why the possessions are less, I conceive to be, because certain sumptuous veins and humours of expence, as apparel, gaming, maintaining of a kind of followers, and the like, do reign more than they did in times past. Another reason is, because noblemen now-a-days do deal better with their younger sons than they were accustomed to do heretofore, whereby the principal house receiveth many abatements. Touching the command, which is not indeed so great as it hath been, I take it rather to be a commendation of the time, than otherwise: for men were wont factiously to depend upon noblemen, whereof ensued many partialities and divisions, besides much interruption of justice, while the great

ones did seek to bear out those that did depend upon them. So as the kings of this realm, finding long since that kind of commandment in noblemen unsafe unto their crown, and inconvenient unto their people, thought meet to restrain the same by provision of laws; whereupon grew the statute of retainers; so as men now depend upon the prince and the laws, and upon no other; a matter which hath also a congruity with the nature of the time, as may be seen in other countries; namely, in Spain, where their grandees are nothing so potent and so absolute as they have been in times past. But otherwise, it may be truly affirmed, that the rights and pre-eminencies of the nobility were never more duly and exactly preserved unto them, than they have been in her majesty's time; the precedence of knights given to the younger sons of barons; no subpœnas awarded against the nobility out of the chancery, but letters; no answer upon oath, but upon honour: besides a number of other privileges in parliament, court, and country. So likewise for the countenance of her majesty and the state, in lieutenancies, commissions, offices, and the like, there was never a more honourable and graceful regard had of the nobility; neither was there ever a more faithful remembrancer and exacter of all these particular pre-eminencies unto them; nor a more diligent searcher and register of their pedigrees, alliances, and all memorials of honour, than that man, whom he chargeth to have overthrown the nobility; because a few of them by immoderate

expence are decayed, according to the humour of the time, which he hath not been able to resist, no not in his own house. And as for attainders, there have been in thirty-five years but five of any of the nobility, whereof but two came to execution; and one of them was accompanied with restitution of blood in the children: yea, all of them, except Westmoreland, were such, as, whether it were by favour of law or government, their heirs have, or are like to have, a great part of their possessions. And so much for the nobility.

Touching the oppression of the people, he mentioneth four points.

1. The consumption of people in the wars.

2. The interruption of traffic.

3. The corruption of justice.

4. The multitude of taxations. Unto all which points there needeth no long speech. For the first, thanks be to God, the benediction of "Crescite" and "Multiplicamini," is not so weak upon this realm of England, but the population thereof may afford such loss of men as were sufficient for the making our late wars, and were in a perpetuity, without being seen either in city or country. We read, that when the Romans did take cense of their people, whereby the citizens were numbered by the poll in the beginning of a great war; and afterwards again at the ending, there sometimes wanted a third part of the number: but let our muster-books be perused, those, I say, that certify the number of all fighting

men in every shire, of "vicesimo" of the queen; at what time, except a handful of soldiers in the Low Countries, we expended no men in the wars; and now again, at this present time, and there will appear small diminution. There be many tokens in this realm rather of press and surcharge of people, than of want and depopulation, which were before recited. Besides, it is a better condition of inward peace to be accompanied with some exercise of no dangerous war in foreign parts, than to be utterly without apprentisage of war, whereby people grow effeminate and unpractised when occasion shall be. And it is no small strength unto the realm, that in these wars of exercise and not of peril, so many of our people are trained, and so many of our nobility and gentlemen have been made excellent leaders both by sea and land. As for that he objecteth, we have no provision for soldiers at their return; though that point hath not been altogether neglected, yet I wish with all my heart, that it were more ample than it is; though I have read and heard, that in all estates, upon casheering and disbanding of soldiers, many have endured necessity.

For the stopping of traffic, as I referred myself to the muster-books for the first, so I refer myself to the custom-books upon this, which will not lie, and do make demonstration of no abatement at all in these last years, but rather of rising and increase. We know of many in London and other places that are within a small time greatly come up and made

rich by merchandising: and a man may speak within his compass, and affirm, that our prizes by sea have countervailed any prizes upon us.

And as to the justice of this realm, it is true, that cunning and wealth have bred many suits and debates in law. But let those points be considered: the integrity and sufficiency of those which supply the judicial places in the queen's courts; the good laws that have been made in her majesty's time against informers and promoters, and for the bettering of trials; the example of severity which is used in the Star-chamber, in oppressing forces and frauds; the diligence and stoutness that is used by justices of assizes, in encountering all countenancing and bearing of causes in the country, by their authorities and wisdom; the great favours that have been used towards copyholders and customary tenants, which were in ancient times merely at the discretion and mercy of the lord, and are now continually relieved from hard dealing, in chancery and other courts of equity: I say, let these and many other points be considered, and men will worthily conceive an honourable opinion of the justice of England.

Now to the points of levies and distributions of money, which he calleth exactions. First, very coldly, he is not abashed to bring in the gathering for Paul's steeple and the lottery trifles: whereof the former, being but a voluntary collection of that men were freely disposed to give, never grew to so great a sum as was sufficient to finish the work for

which it was appointed: and so I imagine, it was converted into some other use; like to that gathering which was for the fortifications of Paris; save that the gathering for Paris came to a much greater, though, as I have heard, no competent sum. And for the lottery, it was but a novelty devised and followed by some particular persons, and only allowed by the state, being as a gain of hazard; wherein if any gain was, it was because many men thought scorn, after they had fallen from their greater hopes to fetch their odd money. Then he mentioneth loans and privy seals: wherein he sheweth great ignorance and indiscretion, considering the payments back again have been very good and certain, and much for her majesty's honour. Indeed, in other princes' times it was not wont to be so. And therefore, though the name be not so pleasant, yet the use of them in our times have been with small grievance. He reckoneth also new customs upon cloths, and new impost upon wines. In that of cloths, he is deceived; for the ancient rate of custom upon cloths was not raised by her majesty, but by queen Mary, a catholic queen: and hath been commonly continued by her majesty; except he mean the computation of the odd yards, which in strict duty was ever answerable, though the error were but lately looked into, or rather the toleration taken away. And to that of wines, being a foreign merchandise, and but a delicacy, and of those which might be forborn, there hath been some increase of imposition, which can rather make the price of wine higher,

than the merchant poorer. Lastly, touching the number of subsidies, it is true, that her majesty, in respect of the great charges of her wars, both by sea and land, against such a lord of treasure as is the king of Spain; having for her part no Indies nor mines, and the revenues of the crown of England being such, as they less grate upon the people than the revenues of any crown or state in Europe, hath, by the assent of parliament, according to the ancient customs of this realm, received divers subsidies of her people, which as they have been employed upon the defence and preservation of the subject, not upon excessive buildings, nor upon immoderate donatives, nor upon triumphs and pleasures; or any the like veins of dissipation of treasure, which have been familiar to many kings: so have they been yielded with great good-will and cheerfulness, as may appear by other kinds of benevolence, presented to her likewise in parliament; which her majesty nevertheless hath not put in ure. They have been taxed also and assessed with a very light and gentle hand; and they have been spared as much as may be, as may appear in that her majesty now twice, to spare the subject, hath sold of her own lands. But he that shall look into other countries, and consider the taxes, and talliages, and impositions, and assizes, and the like, that are every where in use, will find that the Englishman is the most master of his own valuation, and the least bitten in his purse of any nation of Europe. Nay even at this instant in the kingdom of Spain, notwithstanding the pioneers do

still work in the Indian mines, the Jesuits most play the pioneers, and mine into the Spaniards' purses; and, under the colour of a ghostly exhortation, contrive the greatest exaction that ever was in any realm.

Thus much, in answer of these calumniations, I have thought good to note touching the present state of England; which state is such, that whosoever hath been an architect in the frame thereof, under the blessing of God, and the virtues of our sovereign, needed not to be ashamed of his work.

III. Of the proceedings against the pretended catholics, whether they have been violent, or moderate and necessary.

I find her majesty's proceedings generally to have been grounded upon two principles: the one,

That consciences are not to be forced, but to be won and reduced by the force of truth, by the aid of time, and the use of all good means of instruction or persuasion: the other,

That causes of conscience when they exceed their bounds, and prove to be matter of faction, lose their nature; and that sovereign princes ought distinctly to punish the practice or contempt, though coloured with the pretences of conscience and religion.

According to these two principles, her majesty, at her coming to the crown, utterly disliking of the tyranny of the church of Rome, which had used by terror and rigour to seek commandment over men's faiths and consciences; although, as a prince of

great wisdom and magnanimity, she suffered but the exercise of one religion, yet her proceedings towards the papists were with great lenity, expecting the good effects which time might work in them.

And therefore her majesty revived not the laws made in twenty-eighth, and thirty-fifth, of her father's reign, whereby the oath of supremacy might have been offered at the king's pleasure to any subject, though he kept his conscience never so modestly to himself; and the refusal to take the same oath, without farther circumstance, was made treason: but contrariwise, her majesty not liking to make windows into men's hearts and secret thoughts, except the abundance of them did overflow into overt and express acts and affirmations, tempered her law so, as it restraineth only manifest disobedience in impugning and impeaching advisedly and ambitiously her majesty's supreme power, and maintaining and extolling a foreign jurisdiction. And as for the oath, it was altered by her majesty into a more grateful form; the harshness of the name, and appellation of supreme head was removed; and the penalty of the refusal thereof turned into a disablement to take any promotion, or to exercise any charge; and yet that with a liberty of being revested therein, if any man shall accept thereof during his life.

But after many years toleration of a multitude of factious papists, when Pius Quintus had excommunicated her majesty, and the bill of excommunication was published in London, whereby her majesty was in a sort proscribed, and all her subjects

drawn upon pain of damnation from her obedience; and that thereupon, as upon a principal motive or preparative, followed the rebellion in the north; yet notwithstanding, because many of those evil humours were by that rebellion partly purged, and that she feared at that time no foreign invasion, and much less the attempts of any within the realm not backed by some foreign succours from without; she contented herself to make a law against that special case of bringing in, or publishing of bulls or the like instruments; whereunto was added a prohibition, not upon pain of treason, but of an inferior degree of punishment, against bringing in of "Agnus Dei's," hallowed beads, and such other merchandise of Rome, as are well known not to be any essential part of the Roman religion, but only to be used in practice as love-tokens, to enchant and bewitch the people's affections from their allegiance to their natural sovereign. In all other points her majesty continued her former lenity.

But when, about the twentieth year of her reign, she had discovered in the king of Spain an intention to invade her dominions, and that a principal point of the plot was to prepare a party within the realm that might adhere to the foreigner; and that the seminaries began to blossom and to send forth daily priests and professed men, who should by vow, taken at shrift, reconcile her subjects from her obedience; yea, and bind many of them to attempt against her majesty's sacred person; and that, by the poison they spread, the humours of most papists were

altered, and that they were no more papists in custom, but papists in treasonable faction: then were there new laws made for the punishment of such as should submit themselves to reconcilements or renunciations of obedience. For it is to be understood, that this manner of reconcilement in confession, is of the same nature and operation that the bull itself was of, with this only difference, that whereas the bull assoiled the subjects from their obedience at once, the other doth it one by one. And therefore it is both more secret, and more insinuative into the conscience, being joined with no less matter than an absolution from mortal sin. And because it was a treason carried in the clouds, and in wonderful secrecy, and came seldom to light; and that there was no presumption thereof so great as the recusants to come to divine service, because it was set down by their decrees, that to come to church before reconcilement, was to live in schism; but to come to church after reconcilement, was absolutely heretical and damnable: therefore there were added new laws, containing a punishment pecuniary against the recusants, not to enforce consciences, but to enfeeble those of whom it rested indifferent and ambiguous, whether they were reconciled or no? For there is no doubt, but if the law of recusancy, which is challenged to be so extreme and rigorous, were thus qualified, that any recusant that shall voluntarily come in and take his oath, that he or she were never reconciled, should immediately be discharged of the penalty and forfeiture of the law;

they would be so far from liking well of that mitigation, as they would cry out it was made to intrap them. And when, notwithstanding all this provision, this poison was dispersed so secretly, as that there were no means to stay it, but to restrain the merchants that brought it in; then was there lastly added a law, whereby such seditious priests of the new erection were exiled; and those that were at that time within the land shipped over, and so commanded to keep hence upon pain of treason.

This hath been the proceeding with that sort, though intermingled not only with sundry examples of her majesty's grace, towards such as in her wisdom she knew to be papists in conscience, and not in faction; but also with an extraordinary mitigation towards the offenders in the highest degree convicted by law, if they would protest, that in case this realm should be invaded with a foreign army, by the pope's authority, for the catholic cause, as they term it, they would take part with her majesty, and not adhere to her enemies.

And whereas he saith no priest dealt in matter of state, Ballard only excepted; it appeareth by the records of the confession of the said Ballard, and sundry other priests, that all priests at that time generally were made acquainted with the invasion then intended, and afterwards put in act; and had received instructions not only to move an expectation in the people of a change, but also to take their vows and promises in shrift to adhere to the foreigner; insomuch that one of their principal heads vaunted

himself in a letter of the device, saying, that it was a point the counsel of England would never dream of, who would imagine that they should practise with some nobleman to make him head of their faction; whereas they took a course only to deal with the people, and them so severally, as any one apprehended should be able to appeal no more than himself, except the priests, who he knew would reveal nothing that was uttered in confession: so innocent was this princely priestly function, which this man taketh to be but a matter of conscience, and thinketh it reason it should have free exercise throughout the land.

IV. Of the disturbance of the quiet of Christendom; and to what causes it may be justly assigned.

It is indeed a question, which those that look into matters of state do well know to fall out very often; though this libeller seemeth to be more ignorant thereof, whether the ambition of the more mighty state, or the jealousy of the less mighty state, is to be charged with breach of amity. Hereof as there may be many examples, so there is one so proper unto the present matter, as though it were many years since, yet it seemeth to be a parable of these times, and namely of the proceedings of Spain and England.

The states then, which answered to these two now, were Macedon and Athens. Consider therefore the resemblance between the two Philips, of Macedon and Spain: he of Macedon aspired to the monarchy of Greece, as he of Spain doth of Europe;

but more apparently than the first, because that design was discovered in his father Charles V. and so left him by descent; whereas Philip of Macedon was the first of the kings of that nation which fixed so great conceits in his breast. The course which this king of Macedon held was not so much by great armies and invasions, though these wanted not when the case required, but by practice, by sowing of factions in states, and by obliging sundry particular persons of greatness. The state of opposition against his ambitious proceedings was only the state of Athens, as now is the state of England against Spain. For Lacedæmon and Thebes were both low, as France is now; and the rest of the states of Greece were, in power and territories, far inferior. The people of Athens were exceedingly affected to peace, and weary of expence. But the point which I chiefly make the comparison, was that of the orators, which were as counsellors to a popular state; such as were sharpest sighted, and looked deepest into the projects and spreading of the Macedonians, doubting still that the fire, after it licked up the neighbour states, and made itself opportunity to pass, would at last take hold of the dominions of Athens with so great advantages, as they should not be able to remedy it, were ever charged both by the declarations of the king of Macedon, and by the imputation of such Athenians as were corrupted to be of his faction, as the kindlers of troubles, and disturbers of the peace and leagues: but as that party was in Athens too

mighty, so as it discountenanced the true counsels of the orators, and so bred the ruin of that state, and accomplished the ends of that Philip: so it is to be hoped that in a monarchy, where there are commonly better intelligences and resolutions than in a popular state, those plots as they are detected already, so they will be resisted and made frustrate.

But to follow the libeller in his own course; the sum of that which he delivereth concerning the imputation, as well of the interruption of the amity between the crowns of England and of Spain, as the disturbance of the general peace of Christendom, unto the English proceedings, and not to the ambitious appetites of Spain, may be reduced into three points.

1. Touching the proceeding of Spain and England towards their neighbour states.

2. Touching the proceeding of Spain and England between themselves.

3. Touching the articles and conditions which it pleaseth him, as it were in the behalf of England, to pen and propose for the treating and concluding of an universal peace.

In the first he discovereth how the king of Spain never offered molestation, neither unto the states of Italy, upon which he confineth by Naples and Milan; neither unto the states of Germany, unto whom he confineth by a part of Burgundy and the Low Countries; nor unto Portugal, till it was devolved to him in title, upon which he confineth by Spain; but contrariwise, as one that had in precious regard the

peace of Christendom, he designed from the beginning to turn his whole forces upon the Turk. Only he confesseth, that agreeable to his devotion, which apprehended as well the purging of Christendom from heresies, as the enlarging thereof upon the Infidels, he was ever ready to give succours unto the French kings against the Huguenots, especially being their own subjects: whereas, on the other side, "England," as he affirmeth, "hath not only "sowed troubles and dissentions in France and "Scotland, the one their neighbour upon the con- "tinent, the other divided only by the narrow seas, "but also hath actually invaded both kingdoms. "For as for the matters of the Low Countries, "they belong to the dealings which have passed "by Spain."

In answer whereof, it is worthy the consideration how it pleased God in that king to cross one passion by another; and namely, that passion which might have proved dangerous unto all Europe, which was his ambition, by another which was only hurtful to himself and his own, which was wrath and indignation towards his subjects of the Netherlands. For after that he was settled in his kingdom, and freed from some fear of the Turk, revolving his father's design in aspiring to the monarchy of Europe, casting his eye principally upon the two potent kingdoms of France and England; and remembering how his father had once promised unto himself the conquest of the one; and how himself by marriage had lately had some possession of the other; and seeing that

diversity of religion was entered into both these realms; and that France was fallen unto princes weak, and in minority; and England unto the government of a lady, in whom he did not expect that policy of government, magnanimity, and felicity, which since he hath proved, concluded, as the Spaniards are great waiters upon time, and ground their plots deep, upon two points; the one to profess an extraordinary patronage and defence of the Roman religion, making account thereby to have factions in both kingdoms: in England a faction directly against the state; in France a faction that did consent indeed in religion with the king, and therefore at first shew should seem unproper to make a party for a foreigner. But he foresaw well enough that the king of France should be forced, to the end to retain peace and obedience, to yield in some things to those of the religion, which would undoubtedly alienate the fiery and more violent sort of papists; which preparation in the people, added to the ambition of the family of Guise, which he nourished for an instrument, would in the end make a party for him against the state, as since it proved, and might well have done long before, as may well appear by the mention of league and associations, which is above twenty-five years old in France.

The other point he concluded upon, was, that his Low Countries was the aptest place both for ports and shipping, in respect of England, and for situation in respect of France, having goodly frontier towns upon that realm, and joining also upon Germany,

whereby they might receive in at pleasure any forces of Almaigns, to annoy and offend either kingdom. The impediment was the inclination of the people, which, receiving a wonderful commodity of trades out of both realms, especially of England; and having been in ancient league and confederacy with our nation, and having been also homagers unto France, he knew would be in no wise disposed to either war: whereupon he resolved to reduce them to a martial government, like unto that which he had established in Naples and Milan; upon which suppression of their liberties ensued the defection of those provinces. And about the same time the reformed religion found entrance in the same countries; so as the king, inflamed with the resistance he found in the first part of his plots, and also because he might not dispense with his other principle in yielding to any toleration of religion; and withal expecting a shorter work of it than he found, became passionately bent to reconquer those countries; wherein he hath consumed infinite treasure and forces. And this is the true cause, if a man will look into it, that hath made the king of Spain so good a neighbour; namely, that he was so intangled with the wars of the Low Countries as he could not intend any other enterprise. Besides, in enterprising upon Italy, he doubted first the displeasure of the see of Rome, with whom he meant to run a course of strait conjunction; also he doubted it might invite the Turk to return. And for Germany, he had a fresh example of his father, who, when he had annexed unto the domi-

nions which he now possesseth, the empire of Almaign, nevertheless sunk in that enterprise; whereby he perceived that the nation was of too strong a composition for him to deal withal: though not long since, by practice, he could have been contented to snatch up in the East the country of Embden. For Portugal, first, the kings thereof were good sons to the see of Rome; next, he had no colour of quarrel or pretence; thirdly, they were officious unto him: yet if you will believe the Genoese, who otherwise writeth much to the honour and advantage of the kings of Spain, it seemeth he had a good mind to make himself a way into that kingdom, seeing that for that purpose, as he reporteth, he did artificially nourish the young king Sebastian in the voyage of Afric, expecting that overthrow which followed.

As for his intention to war upon the Infidels and Turks, it maketh me think what Francis Guicciardine, a wise writer of history, speaketh of his great grandfather, making a judgment of him as historiographers use; that he did always mask and veil his appetites with a demonstration of a devout and holy intention to the advancement of the Church and the public good. His father also, when he received advertisement of the taking of the French king, prohibited all ringings, and bonfires, and other tokens of joy; and said, those were to be reserved for victories upon infidels: on whom he meant never to war. Many a cruzado hath the bishop of Rome granted to him and his predecessors upon that

colour, which all have been spent upon the effusion of Christian blood: and now this year the levies of Germans, which should have been made underhand for France, were coloured with the pretence of war upon the Turk; which the princes of Germany descrying, not only break the levies, but threatened the commissioners to hang the next that should offer the like abuse: so that this form of dissembling is familiar, and as it were hereditary to the king of Spain.

And as for his succours given to the French king against the Protestants, he could not chuse but accompany the pernicious counsels which still he gave to the French kings, of breaking their edicts, and admitting of no pacification, but pursuing their subjects with mortal war, with some offer of aids; which having promised, he could not but in some small degree perform; whereby also the subject of France, namely the violent Papist, was inured to depend upon Spain. And so much for the king of Spain's proceeding towards other states.

Now for ours: and first touching the point wherein he chargeth us to be the authors of troubles in Scotland and France; it will appear to any that have been well informed of the memoirs of these affairs, that the troubles of those kingdoms were indeed chiefly kindled by one and the same family of the Guise: a family, as was partly touched before, as particularly devoted now for many years together to Spain, as the order of the Jesuits is. This house of Guise, having of late years extraordinarily flou-

rished in the eminent virtue of a few persons, whose ambition nevertheless was nothing inferior to their virtue; but being of a house, notwithstanding, which the princes of the blood of France reckoned but as strangers, aspired to a greatness more than civil and proportionable to their cause, wheresoever they had authority: and accordingly, under colour of consanguinity and religion, they brought into Scotland in the year 1559, and in the absence of the king and queen, French forces in great numbers; whereupon the ancient nobility of that realm, seeing the imminent danger of reducing that kingdom under the tyranny of strangers, did pray, according to the good intelligence between the two crowns, her majesty's neighbourly forces. And so it is true, that the action being very just and honourable, her majesty undertook it, expelled the strangers, and restored the nobility to their degrees, and the state to peace.

After, when certain noblemen of Scotland of the same faction of Guise had, during the minority of the king, possessed themselves of his person, to the end to abuse his authority many ways; and namely, to make a breach between Scotland and England; her majesty's forces were again, in the year 1582, by the king's best and truest servants sought and required: and with the forces of her majesty prevailed so far, as to be possessed of the castle of Edinburgh, the principal part of that kingdom; which nevertheless her majesty incontinently with all honour and sincerity restored, after she had put the king into good and faithful hands; and so, ever since, in all

the occasions of intestine troubles, whereunto that nation hath been ever subject, she hath performed unto the king all possible good offices, and such as he doth with all good affection acknowledge.

The same house of Guise, under colour of alliance, during the reign of Francis the Second, and by the support and practice of the queen-mother; who, desiring to retain the regency under her own hands during the minority of Charles the Ninth, used those of Guise as a counterpoise to the princes of the blood, obtained also great authority in the kingdom of France: whereupon, having raised and moved civil wars under pretence of religion, but indeed to enfeeble and depress the ancient nobility of that realm; the contrary part, being compounded of the blood-royal and the greatest officers of the crown, opposed themselves only against their insolency; and to their aids called in her majesty's forces, giving them for security the town of Newhaven; which, nevertheless, when as afterwards, having by the reputation of her majesty's confederation made their peace in effect as they would themselves, they would, without observing any conditions that had passed, have had it back again; then indeed, it was held by force, and so had been long, but for the great mortality which it pleased God to send amongst our men. After which time, so far was her majesty from seeking to sow or kindle new troubles, as continually, by the solicitation of her ambassadors, she still persuaded the kings, both Charles IX. and Henry III. to keep and observe their edicts of pacification, and

to preserve their authority by the union of their subjects; which counsel, if it had been as happily followed as it was prudently and sincerely given, France had been at this day a most flourishing kingdom, which is now a theatre of misery: and now in the end, after that the ambitious practices of the same house of Guise had grown to that ripeness, that gathering farther strength upon the weakness and mis-government of the said king Henry III. he was fain to execute the duke of Guise without ceremony at Blois. And yet, nevertheless, so many men were embarked and engaged in that conspiracy, as the flame thereof was nothing assuaged; but, contrariwise, that king Henry grew distressed, so as he was enforced to implore the succours of England from her majesty, though no way interested in that quarrel, nor any way obliged for any good offices she had received of that king, yet she accorded to the same: before the arrival of which forces, the king being by a sacrilegious Jacobine murdered in his camp near Paris, yet they went on, and came in good time for the assistance of the king which now reigneth; the justice of whose quarrel, together with the long continued amity and good intelligence, which her majesty had with him, hath moved her majesty from time to time to supply with great aids; and yet she never, by any demand, urged upon him the putting into her hands of any town or place: so as upon this that hath been said let the reader judge, whether hath been the more just and honourable proceeding, and the more free from ambition and passion towards

other states; that of Spain, or that of England. Now let us examine the proceedings reciprocal between themselves.

Her majesty, at her coming to the crown, found her realm intangled with the wars of France and Scotland, her nearest neighbours; which wars were grounded only upon the Spaniard's quarrel; but in the pursuit of them had lost England the town of Calais: which, from the twenty-first of king Edward III. had been possessed by the kings of England. There was a meeting near Bourdeaux, towards the end of Queen Mary's reign, between the commissioners of France, Spain, and England, and some overture of peace was made; but broke off upon the article of the restitution of Calais. After Queen Mary's death, the king of Spain, thinking himself discharged of that difficulty, though in honour he was no less bound to it than before, renewed the like treaty, wherein her majesty concurred: so as the commissioners for the said princes met at Chasteau Cambraissi, near Cambray. In the proceedings of which treaty, it is true, that at the first the commissioners of Spain, for form and in demonstration only, pretended to stand firm upon the demand of Calais: but it was discerned, indeed, that the king's meaning was, after some ceremonies and prefunctory insisting thereupon, to grow apart to a peace with the French, excluding her majesty, and so to leave her to make her own peace, after her people had made his wars. Which covert dealing being politicly looked into, her majesty had reason, being newly invested in her

kingdom, and of her own inclination being affected to peace, to conclude the same with such conditions as she might: and yet the king of Spain in his dissimulation had so much advantage as she was fain to do it in a treaty apart with the French; whereby to one that is not informed of the counsels and treaties of state, as they passed, it should seem to be a voluntary agreement of her majesty, whereto the king of Spain would not be party: whereas indeed he left her no other choice; and this was the first assay or earnest penny of that king's good affection to her majesty.

About the same time, when the king was solicited to renew such treaties and leagues as had passed between the two crowns of Spain and England, by the lord Cobham, sent unto him, to acquaint him with the death of queen Mary; and afterwards by Sir Thomas Chaloner and Sir Thomas Chamberlain, successively ambassadors resident in his Low Countries; who had order, divers times, during their charge, to make overtures thereof, both under the king, and certain principal persons about him; and lastly, those former motions taking no effect, by Viscount Montacute and Sir Thomas Chamberlain, sent into Spain in the year 1560; no other answer could be had or obtained of the king, but that the treaties did stand in as good force to all intents as new ratification could make them. An answer strange at that time, but very conformable to his proceedings since: which belike even then were closely smothered in his own breast. For had he

not at that time had some hidden alienation of mind, and design of an enemy towards her majesty, so wise a king could not be ignorant, that the renewing and ratifying of treaties between princes and states do add great life and force, both of assurance to the parties themselves, and countenance and reputation to the world besides; and have for that cause been commonly and necessarily used and practised.

In the message of Viscount Montacute, it was also contained, that he should crave the king's counsel and assistance, according to amity and good intelligence, upon a discovery of certain pernicious plots of the house of Guise, to annoy this realm by the way of Scotland: whereunto the king's answer was so dark and so cold, that nothing could be made of it, till he had made an exposition of it himself by effects, in the express restraint of munition to be carried out of the Low Countries unto the siege of Leith; because our nation was to have supply thereof from thence. So as in all the negociations that passed with that king, still her majesty received no satisfaction, but more and more suspicious and bad tokens of evil affection.

Soon after, when upon that project, which was disclosed before the king had resolved to disanul the liberties and privileges unto his subjects of the Netherlands anciently belonging; and to establish amongst them a martial government, which the people, being very wealthy, and inhabiting towns very strong and defensible by fortifications both of nature and the hand, could not endure, there fol-

lowed the defection and revolt of those countries. In which action, being the greatest of all those which have passed between Spain and England, the proceeding of her majesty hath been so just, and mingled with so many honourable regards, as nothing doth so much clear and acquit her majesty, not only from passion, but also from all dishonourable policy. For first, at the beginning of the troubles, she did impart unto him faithful and sincere advice of the course that was to be taken for the quieting and appeasing them; and expressly forewarned both himself and such as were in principal charge in those countries, during the wars, of the danger like to ensue if he held so heavy a hand over that people; lest they should cast themselves into the arms of a stranger. But finding the king's mind so exulcerated as he rejected all counsel that tended to mild and gracious proceeding, her majesty nevertheless gave not over her honourable resolution, which was, if it were possible, to reduce and reconcile those countries unto the obedience of their natural sovereign the king of Spain; and if that might not be, yet to preserve them from alienating themselves to a foreign lord, as namely unto the French, with whom they much treated; and amongst whom the enterprise of Flanders was ever propounded as a mean to unite their own civil dissensions, but patiently temporising, expected the good effect which time might breed. And whensoever the states grew into extremities of despair, and thereby ready to embrace the offer of any foreigner, then

would her majesty yield them some relief of money, or permit some supply of forces to go over unto them; to the end, to interrupt such violent resolution: and still continued to mediate unto the king some just and honourable capitulations of grace and accord, such as whereby always should have been preserved unto him such interest and authority as he in justice could claim, or a prince moderately minded would seek to have. And this course she held interchangeably, seeking to mitigate the wrath of the king, and the despair of the countries, till such time as after the death of the duke of Anjou, into whose hands, according to her majesty's prediction, but against her good liking, they had put themselves, the enemy pressing them, the United Provinces were received into her majesty's protection: which was after such time, as the king of Spain had discovered himself, not only an implacable lord to them, but also a professed enemy unto her majesty; having actually invaded Ireland, and designed the invasion of England. For it is to be noted, that the like offers which were then made unto her majesty, had been made to her long before: but as long as her majesty conceived any hope, either of making their peace, or entertaining her own with Spain, she would never hearken thereunto. And yet now, even at last, her majesty retained a singular and evident proof to the world of her justice and moderation, in that she refused the inheritance and sovereignty of those goodly provinces; which by the states, with much instance, was pressed upon her; and

being accepted, would have wrought greater contentment and satisfaction both to her people and theirs, being countries for the site, wealth, commodity of traffic, affection to our nation, obedience of the subjects, well used, most convenient to have been annexed to the crown of England, and with all one charge, danger, and offence of Spain; only took upon her the defence and protection of their liberties; which liberties and privileges are of that nature, as they may justly esteem themselves but conditional subjects to the king of Spain, more justly than Arragon: and may make her majesty as justly esteem the ancient confederacies and treaties with Burgundy to be of force rather with the people and nation, than with the line of the duke; because it was never an absolute monarchy. So as, to sum up her majesty's proceedings in this great action, they have but this, that they have sought first to restore them to Spain, then to keep them from strangers, and never to purchase them to herself.

But during all that time, the king of Spain kept one tenor in his proceedings towards her majesty, breaking forth more and more into injuries and contempts: her subjects trading into Spain have been many of them burned; some cast into the galleys; others have died in prison, without any other crimes committed, but upon quarrels picked upon them for their religion here at home. Her merchants, at the sack of Antwerp, were divers of them spoiled and put to their ransoms, though they could not be charged

with any partaking; neither, upon the complaint of Doctor Wilson and Sir Edward Horsey, could any redress be had. A general arrest was made by the duke of Alva of Englishmens both goods and persons, upon pretence that certain ships, stayed in this realm laden with goods and money of certain merchants of Genoa, belonged to that king: which money and goods was afterwards, to the uttermost value, restored and paid back; whereas our men were far from receiving the like justice on their side. Dr. Man, her majesty's ambassador, received, during his legation, sundry indignities; himself being removed out of Madrid, and lodged in a village, as they are accustomed to use the ambassadors of Moors: his son and steward forced to assist at a mass with tapers in their hands; besides sundry other contumelies and reproaches. But the spoiling or damnifying of a merchant, vexation of a common subject, dishonour of an ambassador, were rather but demonstrations of ill disposition, than effects, if they be compared with actions of state, wherein he and his ministers have sought the overthrow of this government. As in the year 1569, when the rebellion in the north part of England brake forth; who but the duke of Alva, then the king's lieutenant in the Low Countries, and Don Guerres of Espes, then his ambassador lieger here, were discovered to be chief instruments and practisers; having complotted with the duke of Norfolk at the same time, as was proved at the same duke's condemnation, that

an army of twenty thousand men should have landed at Harwich, in aid of that part, which the said duke had made within the realm, and the said duke having spent and employed one hundred and fifty thousand crowns in that preparation.

Not contented thus to have consorted and assisted her majesty's rebels in England, he procured a rebellion in Ireland; arming and sending thither in the year 1579 an arch-rebel of that country, James Fitz-Morrice, which before was fled. And truly to speak, the whole course of molestation, which her majesty hath received in that realm by the rising and keeping on of the Irish, hath been nourished and fomented from Spain; but afterwards most apparently, in the year 1580, he invaded the same Ireland with Spanish forces, under an Italian colonel, by name San Josepho, being but the forerunners of a greater power; which by treaty between him and the pope should have followed, but that by the speedy defeat of those former, they were discouraged to pursue the action: which invasion was proved to be done by the king's own orders, both by the letters of secretary Escovedo, and of Guerres to the king; and also by divers other letters, wherein the particular conferences were set down concerning this enterprise between cardinal Riario the pope's legate, and the king's deputy in Spain, touching the general, the number of men, the contribution of money, and the manner of the prosecuting of the action, and by the confession of some of the chiefest of those that were taken prisoners at the fort; which act being an

act of apparent hostility, added unto all the injuries aforesaid, and accompanied with a continual receit, comfort, and countenance, by audiencies, pensions, and employments, which he gave to traitors and fugitives, both English and Irish; as Westmoreland, Paget, Englefield, Baltinglass, and numbers of others; did sufficiently justify and warrant that pursuit of revenge, which, either in the spoil of Carthagena and San Domingo in the Indies, by Mr. Drake, or in the undertaking the protection of the Low Countries when the earl of Leicester was sent over, afterwards followed. For before that time her majesty, though she stood upon her guard in respect of the just cause of jealousy, which the sundry injuries of that king gave her; yet had entered into no offensive action against him. For both the voluntary forces which Don Antonio had collected in this realm, were by express commandment restrained, and offer was made of restitution to the Spanish ambassador of such treasure as had been brought into this realm, upon proof that it had been taken by wrong; and the duke of Anjou was, as much as could stand with the near treaty of a marriage which then was very forward between her majesty and the said duke, diverted from the enterprise of Flanders.

But to conclude this point: when that, some years after, the invasion and conquest of this land, intended long before, but through many crosses and impediments, which the king of Spain found in his plots, deferred, was in the year 1588 attempted;

her majesty, not forgetting her own nature, was content at the same instant to treat of a peace; not ignorantly, as a prince that knew not in what forwardness his preparations were, for she had discovered them long before, nor fearfully, as may appear by the articles whereupon her majesty in that treaty stood, which were not the demands of a prince afraid; but only to spare the shedding of Christian blood, and to shew her constant desire to make her reign renowned, rather by peace than victories: which peace was on her part treated sincerely, but on his part, as it should seem, was but an abuse; thinking thereby to have taken us more unprovided: so that the duke of Parma, not liking to be used as an instrument in such a case, in regard of his particular honour, would sometimes in treating interlace, that the king his master meant to make his peace with his sword in his hand. Let it then be tried, upon an indifferent view of the proceedings of England and Spain, who it is that fisheth in troubled waters, and hath disturbed the peace of Christendom, and hath written and described all his plots in blood.

There follow the articles of an universal peace, which the libeller, as a commissioner for the estate of England, hath propounded, and are these:

First, that the king of Spain should recall such forces, as, of great compassion to the natural people of France, he hath sent thither to defend them against a relapsed Huguenot.

Secondly, that he suffer his rebels of Holland and Zealand quietly to possess the places they hold, and to take unto them all the rest of the Low Countries also; conditionally, that the English may still keep the possession of such port towns as they have, and have some half a dozen more annexed unto them.

Thirdly, that the English rovers might peaceably go to his Indies, and there take away his treasure and his Indies also.

And these articles being accorded, he saith, might follow that peace which passeth all understanding, as he calleth it in a scurrile and prophane mockery of the peace which Christians enjoy with God, by the atonement which is made by the blood of Christ, whereof the Apostle saith that it passeth all understanding. But these his articles are sure mistaken, and indeed corrected are briefly these:

1. That the king of France be not impeached in reducing his rebels to obedience.

2. That the Netherlands be suffered to enjoy their ancient liberties and privileges, and so forces of strangers to be withdrawn, both English and Spanish.

3. That all nations may trade into the East and West Indies; yea, discover and occupy such parts as the Spaniard doth not actually possess, and are not under civil government, notwithstanding any donation of the pope.

V. Of the cunning of the libeller, in palliation of his malicious invectives against her majesty and the state, with pretence of taxing only the actions of the lord Burleigh.

I cannot rightly call this point cunning in the libeller, but rather good will to be cunning; without skill indeed or judgment: for finding that it hath been the usual and ready practice of seditious subjects to plant and bend their invectives and clamours, not against the sovereigns themselves, but against some such as had grace with them, and authority under them, he put in ure his learning in a wrong and unproper case. For this hath some appearance to cover undutiful invectives, when it is used against favourites or new upstarts, and sudden-risen counsellors: but when it shall be practised against one that hath been counsellor before her majesty's time, and hath continued longer counsellor than any other counsellor in Europe; one that must needs have been great if it were but by surviving alone, though he had no other excellency; one that hath passed the degrees of honour with great travel and long time, which quencheth always envy, except it be joined with extreme malice; then it appeareth manifestly to be but a brick-wall at tennis to make the defamation and hatred rebound from the counsellor upon the prince. And assuredly they be very simple to think to abuse the world with those shifts; since every child can tell the fable, that the wolf's malice was not to the shepherd, but to his dog. It is true, that these men have altered their tune twice or

thrice: when the match was in treating with the duke of Anjou, they spake honey as to her majesty; all the gall was uttered against the earl of Leicester: but when they had gotten heart upon expectation of the invasion, they changed style, and disclosed all the venom in the world immediately against her majesty: what new hope hath made them return to their Sinon's note, in teaching Troy how to save itself, I cannot tell. But in the mean time they do his lordship much honour: for the more despitefully they inveigh against his lordship, the more reason hath her majesty to trust him, and the realm to honour him. It was wont to be a token of scarce a good liegeman when the enemy spoiled the country, and left any particular men's houses or fields unwasted.

VI. Certain true general notes upon the actions of the lord Burleigh.

But above all the rest, it is a strange fancy in the libeller that he maketh his lordship to be the "primum mobile" in every action without distinction; that to him her majesty is accountant of her resolutions; that to him the earl of Leicester and Mr. Secretary Walsingham, both men of great power, and of great wit and understanding, were but as instruments: whereas it is well known, that as to her majesty, there was never a counsellor of his lordship's long continuance that was so appliable to her majesty's princely resolutions; endeavouring always, after faithful propositions and remonstrances, and these in the best words, and the most grateful manner, to

rest upon such conclusions, as her majesty in her own wisdom determineth, and them to execute to the best: so far hath he been from contestation, or drawing her majesty into any his own courses. And as for the forenamed counsellors and others, with whom his lordship had consorted in her majesty's service, it is rather true that his lordship, out of the greatness of his experience and wisdom, and out of the coldness of his nature, hath qualified generally all hard and extreme courses, as far as the service of her majesty, and the safety of the state, and the making himself compatible with those with whom he served, would permit: so far hath his lordship been from inciting others, or running a full course with them in that kind. But yet it is more strange that this man should be so absurdly malicious, as he should charge his lordship, not only with all actions of state, but also with all the faults and vices of the times; as, if curiosity and emulation have bred some controversies in the Church; though, thanks be to God, they extend but to outward things; as, if wealth, and the cunning of wits have brought forth multitudes of suits in law; as, if excess in pleasures, and in magnificence, joined with the unfaithfulness of servants, and the greediness of moneyed men, have decayed the patrimony of many noblemen, and others; that all these, and such like conditions of the time, should be put on his lordship's account; who hath been, as far as to his place appertaineth, a most religious and wise moderator in Church-matters to have unity kept; who with great justice hath dispatched infinite causes

in law that have orderly been brought before him: and for his own example, may say that which few men can say; but was sometimes said by Cephalus, the Athenian so much renowned in Plato's works; who having lived near to the age of an hundred years, and in continual affairs and business, was wont to say of himself; "That he never sued any, neither had been sued by any:" who by reason of his office hath preserved many great houses from overthrow, by relieving sundry extremities towards such as in their minority have been circumvented; and towards all such as his lordship might advise, did ever persuade sober and limited expence. Nay, to make proof farther of his contented manner of life, free from suits and covetousness; as he never sued any man, so did he never raise any rent, or put out any tenant of his own: nor ever gave consent to have the like done to any of the queen's tenants; matters singularly to be noted in this age.

But however, by this fellow, as in a false artificial glass, which is able to make the best face deformed, his lordship's doings being set forth; yet let his proceedings, which be indeed his own, be indifferently weighed and considered; and let men call to mind, that his lordship was never a violent and transported man in matters of state, but ever respective and moderate; that he was never man in his particular a breaker of necks; no heavy enemy, but ever placable and mild; that he was never a brewer of holy water in court; no dallier, no abuser, but ever real and certain; that he was never a bearing man, nor

carrier of causes, but ever gave way to justice and course of law; that he was never a glorious wilful proud man, but ever civil and familiar, and good to deal withal; that in the course of his service, he hath rather sustained the burden, than sought the fruition of honour or profit; scarcely sparing any time from his cares and travels to the sustentation of his health; that he never had, nor sought to have for himself and his children, any pennyworth of lands or goods that appertained to any attainted of any treason, felony, or otherwise; that he never had, or sought any kind of benefit by any forfeiture to her majesty; that he was never a factious commender of men, as he that intended any ways to besiege her, by bringing in men at his devotion; but was ever a true reporter unto her majesty of every man's deserts and abilities; that he never took the course to unquiet or offend, no nor exasperate her majesty, but to content her mind, and mitigate her displeasure; that he ever bare himself reverently and without scandal in matters of religion, and without blemish in his private course of life. Let men, I say, without passionate malice, call to mind these things, and they will think it reason, that though he be not canonized for a saint in Rome, yet he is worthily celebrated as "Pater patriae" in England, and though he be libelled against by fugitives, yet he is prayed for by a multitude of good subjects; and lastly, though he be envied whilst he liveth, yet he shall be deeply wanted when he is gone. And assuredly many princes have had many servants of

trust, name, and sufficiency: but where there have been great parts, there hath often wanted temper of affection; where there have been both ability and moderation, there have wanted diligence and love of travail; where all three have been, there have sometimes wanted faith and sincerity; where some few have had all these four, yet they have wanted time and experience: but where there is a concurrence of all these, there is no marvel, though a prince of judgment be constant in the employment and trust of such a servant.

VII. Of divers particular untruths and abuses dispersed through the libel.

The order which this man keepeth in his libel, is such, as it may appear, that he meant but to empty some note-book of the matters of England, to bring in, whatsoever came of it, a number of idle jests, which he thought might fly abroad; and intended nothing less than to clear the matters he handled by the light of order and distinct writing. Having therefore in the principal points, namely, the second, third, and fourth articles, ranged his scattering and wandering discourse into some order, such as may help the judgment of the reader, I am now content to gather up some of his by-matters and straggling untruths, and very briefly to censure them.

Page 9, he saith, that his lordship could neither by the greatness of his beads, creeping to the cross, nor exterior shew of devotion before the high-altar, find his entrance into high dignity in queen Mary's

time. All which is a mere fiction at pleasure; for queen Mary bare that respect unto him, in regard of his constant standing for her title, as she desired to continue his service; the refusal thereof growing from his own part: he enjoyed nevertheless all other liberties and favours of the time; save only that it was put into the queen's head that it was dangerous to permit him to go beyond the sea, because he had a great wit of action, and had served in so principal a place; which nevertheless after, with cardinal Pool, he was suffered to do.

Page "eadem" he saith, Sir Nicholas Bacon, that was lord keeper, was a man of exceeding crafty wit; which sheweth that this fellow in his slanders is no good marksman, but throweth out his words of defaming without all level. For all the world noted Sir Nicholas Bacon to be a man plain, direct, and constant, without all finesse and doubleness; and one that was of the mind that a man in his private proceedings and estate, and in the proceedings of state, should rest upon the soundness and strength of his own courses, and not upon practice to circumvent others; according to the sentence of Solomon, "Vir prudens advertit ad gressus suos, stultus "autem divertit ad dolos:" insomuch that the bishop of Ross, a subtle and observing man, said of him, that he could fasten no words upon him, and that it was impossible to come within him, because he offered no play: and the queen-mother of France, a very politic princess, said of him, that he should have been of the council of Spain, because he

despised the occurrents, and rested upon the first plot; so that if he were crafty, it is hard to say who is wise.

Page 10, he saith, that the lord Burleigh, in the establishment of religion, in the beginning of the queen's time, prescribed a composition of his own invention; whereas the same form, not fully six years before, had been received in this realm in king Edward's time: so as his lordship being a Christian politic counsellor, thought it better to follow a precedent, than to innovate; and chose the precedent rather at home than abroad.

Page 41, he saith, that catholics never attempted to murder any principal person of her majesty's court, as did Burchew, whom he calleth a puritan, in wounding of a gentleman instead of Sir Christopher Hatton; but by their great virtue, modesty, and patience, do manifest in themselves a far different spirit from the other sort. For Burchew, it is certain he was mad; as appeareth not only by his mad mistaking, but by the violence that he offered afterwards to his keeper, and most evidently by his behaviour at his execution: but of catholics, I mean the traitorous sort of them, a man may say as Cato said sometimes of Cæsar, "eum ad evertendam rem-"publicam sobrium accessisse:" they came sober and well advised to their treasons and conspiracies; and commonly they look not so low as the counsellors, but have bent their murderous attempts immediately against her majesty's sacred person, which God have in his precious custody! as may appear

by the conspiracy of Sommervile, Parry, Savage, the six, and others; nay, they have defended it "in "thesi," to be a lawful act.

Page 43, he saith, That his lordship, whom he calleth the arch-politic, hath fraudulently provided, that when any priest is arraigned, the indictment is enforced with many odious matters: wherein he sheweth great ignorance, if it be not malice; for the law permitteth not the ancient forms of indictments to be altered; like as, in an action of trespass, although a man take away another's goods in the peaceablest manner in the world, yet the writ hath "quare vi et armis;" and if a man enter upon another's ground and do no more, the plaintiff mentioneth "quod herbam suam, ibidem crescentem, "cum equis, bobus, porcis, et bidentibus, depastus "sit, conculcavit et consumpsit." Neither is this any absurdity, for in the practice of all law the formularies have been few and certain; and not varied according to every particular case. And in indictments also of treason, it is not so far fetched as in that of trespass; for the law ever presumeth in treason an intention of subverting the state, and impeaching the majesty royal.

Page 45, and in other places, speaking of the persecuting of the catholics, he still mentioneth bowellings and consuming men's entrails by fire; as if this were a torture newly devised: wherein he doth cautelously and maliciously suppress, that the law and custom of this land from all antiquity hath ordained that punishment in case of treason, and

permitteth no other. And a punishment surely it is, though of great terror, yet by reason of the quick dispatching, of less torment far than either the wheel or forcipation, yea than simple burning.

Page 48, he saith, England is confederate with the great Turk: wherein if he mean it because the merchants have an agent in Constantinople, how will he answer for all the kings of France since Francis the first, which were good catholics? For the Emperor? For the king of Spain himself? For the senate of Venice, and other states, that have had long time ambassadors liegers in that court? If he mean it because the Turk hath done some special honour to our ambassador, if he be so to be termed, we are beholden to the king of Spain for that: for that the honour, we have won upon him by opposition, hath given us reputation through the world: if he mean it because the Turk seemeth to affect us for the abolishing of images; let him consider then what a scandal the matter of images hath been in the church, as having been one of the principal branches whereby Mahometism entered.

Page 65, he saith, Cardinal Allen was of late very near to have been elected pope. Whereby he would put the catholics here in some hope, that once within five or six years, for a pope commonly sitteth no longer, he may obtain that which he missed narrowly. This is a direct abuse, for it is certain in all the conclaves since Sixtus Quintus, who gave him his hat, he was never in possibility; nay, the king of Spain, that hath patronized the church of Rome so

long, as he is become a right patron of it, in that he seeketh to present to that see whom he liketh, yet never durst strain his credit to so desperate a point as once to make a canvass for him: no, he never nominated him in his inclusive narration. And those that know any thing of the respects of conclaves, know that he is not papable: first, because he is an ultramontane, of which sort there hath been none these fifty years. Next, because he is a cardinal of alms of Spain, and wholly at the devotion of that king. Thirdly, because he is like to employ the treasure and favours of the popedom upon the enterprizes of England, and the relief and advancement of English fugitives, his necessitous countrymen. So as he presumed much upon the simplicity of the reader in this point, as in many more.

Page 55. and again p. 70, he saith, his lordship, meaning the lord Burleigh, intendeth to match his grandchild Mr. William Cecil with the lady Arabella. Which being a mere imagination, without any circumstance at all to induce it, more than that they are both unmarried, and that their years agree well, needeth no answer. It is true that his lordship, being no stoical unnatural man, but loving towards his children, for "charitas reipublicae incipit a familia," hath been glad to match them into honourable and good blood: and yet not so, but that a private gentleman of Northamptonshire, that lived altogether in the country, was able to bestow his daughters higher than his lordship hath done. But yet it is not seen by any thing past, that his lord-

ship ever thought or affected to match his children in the blood royal. His lordship's wisdom, which hath been so long of gathering, teacheth him to leave to his posterity rather surety than danger. And I marvel where be the combinations which have been with great men; and the popular and plausible courses, which ever accompany such designs, as the libeller speaketh of: and therefore this match is but like unto that which the same fellow concluded between the same lady Arabella and the earl of Leicester's son, when he was but a twelvemonth old.

Page 70. he saith, He laboureth incessantly with the queen to make his eldest son deputy of Ireland; as if that were such a catch, considering all the deputies since her majesty's time, except the earl of Sussex and the lord Grey, have been persons of meaner degree than Sir Thomas Cecil is; and the most that is gotten by that place, is but the saving and putting up of a man's own revenues, during those years that he serveth there; and this perhaps to be saved with some displeasure at his return.

Page "eadem" he saith, He hath brought in his second son Sir Robert Cecil to be of the council, who hath neither wit nor experience; which speech is as notorious an untruth as is in all the libel: for it is confessed by all men that know the gentleman, that he hath one of the rarest and most excellent wits of England, with a singular delivery and application of the same; whether it be to use a continued speech, or to negociate, or to couch in writing, or to make report, or discreetly to consider of the circumstances,

and aptly to draw things to a point; and all this joined with a very good nature and a great respect to all men, as is daily more and more revealed. And for his experience, it is easy to think that his training and helps hath made it already such, as many, that have served long prentishood for it, have not attained the like: so as if that be true, "qui beneficium digno dat, omnes obligat," not his father only, but the state is bound unto her majesty, for the choice and employment of so sufficient and worthy a gentleman.

There be many other follies and absurdities in the book; which, if an eloquent scholar had it in hand, he would take advantage thereof, and justly make the author not only odious, but ridiculous and contemptible to the world: but I pass them over, and even this which hath been said hath been vouchsafed to the value and worth of the matter, and not the worth of the writer, who hath handled a theme above his compass.

VIII. Of the height of impudency that these men are grown unto in publishing and avouching untruths, with a particular recital of some of them for an assay.

These men are grown to a singular spirit and faculty in lying and abusing the world; such as, it seemeth, although they are to purchase a particular dispensation for all other sins, yet they have a dispensation dormant to lie for the catholic cause;

which moveth me to give the reader a taste of their untruths, such as are written, and are not merely gross and palpable; desiring him out of their own writings, when any shall fall into his hands, to increase the roll at least in his own memory.

We retain in our calendars no other holydays but such as have their memorials in the Scriptures; and therefore in the honour of the blessed Virgin, we only receive the feasts of the annunciation and the purification; omitting the other of the conception and the nativity; which nativity was used to be celebrated upon the eighth of September, the vigil whereof happened to be the nativity of our queen: which though we keep not holy, yet we use therein certain civil customs of joy and gratulation, as ringing of bells, bonfires, and such like: and likewise make a memorial of the same day in our calendar: whereupon they have published, that we have expunged the nativity of the blessed Virgin, and put instead thereof the nativity of our queen: and farther, that we sing certain hymns unto her, used to be sung unto our Lady.

It happened that, upon some bloodshed in the church of Paul's, according to the canon law, yet with us in force, the said church was interdicted, and so the gates shut up for some few days; whereupon they published, that, because the same church is a place where people use to meet to walk and confer, the queen's majesty, after the manner of the ancient tyrants, had forbidden all assemblies and

meetings of people together, and for that reason, upon extreme jealousy, did cause Paul's gates to be shut up.

The gate of London called Ludgate, being in decay, was pulled down, and built anew; and on the one side was set up the image of king Lud and his two sons; who, according to the name, was thought to be the first founder of that gate; and on the other side, the image of her majesty, in whose time it was re-edified; whereupon they published that her majesty, after all the images of the saints were long beaten down, had now at last set up her own image upon the principal gate of London, to be adored, and that all men were forced to do reverence to it as they passed by, and a watch there placed for that purpose.

Mr. Jewel, the bishop of Salisbury, who according to his life died most godly and patiently, at the point of death used the versicle of the hymn "Te "Deum, O Lord, in thee have I trusted, let me "never be confounded;" whereupon, suppressing the rest, they published, that the principal champion of the heretics in his very last words cried he was confounded.

In the act of recognition of "primo," whereby the right of the crown is acknowledged by parliament to be in her majesty, the like whereof was used in queen Mary's time, the words of limitation are, "in the queen's majesty, and the natural heirs of her body, and her lawful successors." Upon which word, natural, they do maliciously, and indeed vil-

lainously gloss, that it was the intention of the parliament, in a cloud to convey the crown to any issue of her majesty's that were illegitimate; whereas the word heir doth with us so necessarily and pregnantly import lawfulness, as it had been indecorum, and uncivil speaking of the issues of a prince, to have expressed it.

They set forth in the year a book with tables and pictures of the persecutions against catholics, wherein they have not only stories of fifty years old to supply their pages, but also taken all the persecutions of the primitive Church, under the heathen, and translated them to the practice of England; as that of worrying priests under the skins of bears, by dogs, and the like.

I conclude then, that I know not what to make of this excess in avouching untruths, save this, that they may truly chaunt in their quires; "Linguam "nostram magnificabimus, labia nostra nobis sunt:" and that they who have long ago forsaken the truth of God, which is the touchstone, must now hold by the whetstone; and that their ancient pillar of lying wonders being decayed, they must now hold by lying slanders, and make their libels successors to their legend.

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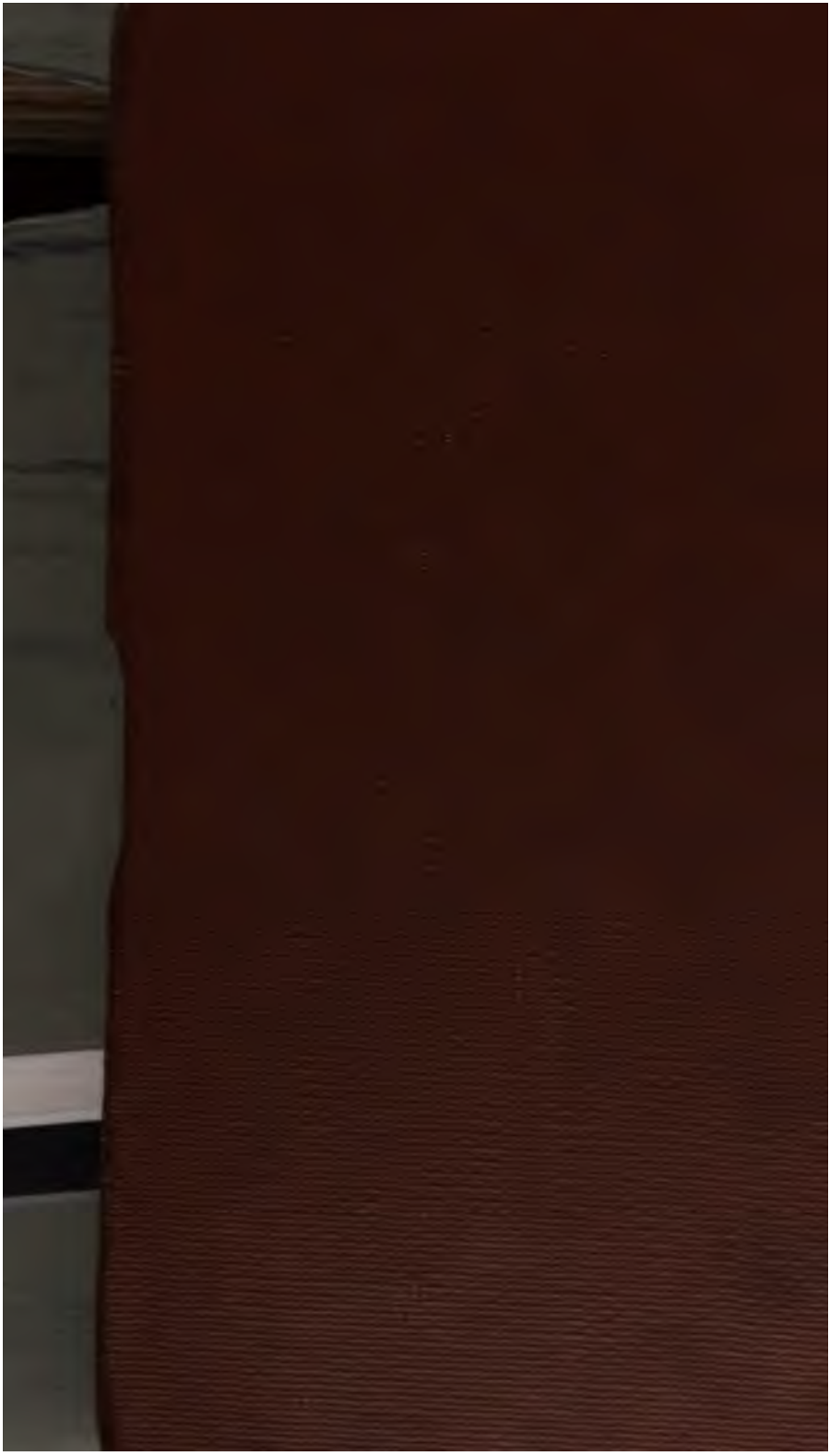
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